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UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a  
Corporation, Owner and Claimant of Steamship "Vir-  
ginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Cor-  
poration,

Appellee.

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AMERICAN-HAWAIIAN STEAMSHIP COMPANY, a  
Corporation, Owner and Claimant of Steamship "Vir-  
ginian,"

Appellant.

vs.

STRATHALBYN STEAMSHIP COMPANY, LTD., a Cor-  
poration, as bailee of a cargo of lumber consisting of  
3,563,011 feet, and for the use and benefit of the owners  
and insurers of said cargo,

Appellee.

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APOSTLES ON APPEAL

(In Five Volumes)

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From the United States District Court for the Western Dis-  
trict of Washington, Southern Division.



Testimony of MR. F. C. HOSTETTER:

third of the distance between Pulley and Robinson, from which you deduct that you had already passed Pulley Point at the time you passed the Virginian?

A. We had run between two and five minutes after drawing a little ahead of the Virginian until we whistled to the Strathalbyn, and it was at this time I would judge that our distance from Point Robinson was about two-thirds of the distance from Point Robinson back to Pulley Point.

Q. As a matter of fact, do you know whether or not you had passed Pulley Point at the time you passed the Virginian? A. To the best of my knowledge we had.

Q. You did not notice the Virginian then from the time you passed her at Pulley Point, or when you passed her, again until you looked back when you were about abeam of the Strathalbyn?

A. That was the next time I noticed her.

Q. And it seemed to you then that her lights through her portholes bore a little different from what they did when you passed her?

A. It seemed from her lights along the side of the vessel that she had turned a trifle to the left.

Q. Now, isn't it a fact that if you had changed your course after passing the Virginian and the Virginian had kept her same course, the bearing of those lights would have been a little different?

A. It is a fact if we had changed our course that the Virginian would have shown off the stern in that direction.

Q. But you say her course was changed a little different when you looked back this time than when you passed her? A. Yes, sir.

Q. And if you were bearing away from her all the time, on a converging course, that would make the same apparent change, wouldn't it?

A. It would.

Q. Do you know whether or not the Virginian changed her course or whether you were converging from her? A. I think,—(interrupted)

Q. But do you know?

A. We could not have changed our course.

Q. You were not navigating the Flyer?

MR. HAYDEN: I want the witness to be allowed to complete his answers to the questions.

(Question read) You can answer that and explain as fully as you wish?

A. I do not think we had changed our course, for if we had we would have drawn away from the Strathalbyn, but as we continued towards the Strathalbyn and she towards us, I naturally presumed it was the other boat which had changed her position.

Q. That is what you deduct it from? A. Yes, sir.

Q. Do you know what course the Strathalbyn was on? A. On a course towards Seattle.

Q. And naturally you were approaching her bound for Tacoma? A. Yes.

Q. You don't know whether the Strathalbyn changed her course or not before you passed her?

A. I do not, definitely. She could not have changed her course to any extent. She might have varied a point or two either way as boats will.

Q. Why couldn't she have changed her course to any extent?

A. Because she would have crossed over or bore further away from us.

Q. And she did not bear any further away from you than when you first saw her out there?

A. Apparently not.

Q. And from that you deduct she did not change her course and that you did not change your course?

A. Yes, sir.

Q. That is how you make it out? A. Yes.

Q. And the Virginian's lights bearing a little different, you deduct that she must have exchanged her course? A. Yes.

Q. And that is what you base your statements upon, that the Virginian's bow turned a trifle to port?

A. Yes.

Q. If your direction was changed any, that deduction is not good, is it?

A. Our direction was not changed.

Q. That you know nothing about; but I say if you



did change your course or if you were pulling away from the Virginian, your deduction is not good?

MR. HAYDEN: I want to object to that. The deductions from the testimony are to be made by the Court.

A. If we had turned considerably toward the shore, your theory would be correct, but also if we had done that we would have run away off from the Strathalbyn instead of passing close to her.

Q. Then it is your theory, is it, that the Flyer after passing the Virginian continued on the same course in the same direction as the Virginian was on, a parallel course? A. That is my impression.

Q. And if she did not continue on a parallel course, would that explain the bearing of the lights from the port-holes?

A. Leaving the Strathalbyn out of the case, yes; that is, if there were just the two boats, the Virginian and the Flyer, and no other lights to guide me in my opinion, then if we had turned to the right, I might have been fooled to that extent.

Q. I cannot see that the Strathalbyn has anything to do with it. I am asking you about the difference in the bearing of those lights that were on the Flyer?

A. If we had turned to the right, I maintain I could not have seen the Virginian at all after passing that distance beyond her.

Q. Why?

A. Because we would have turned around and our stern would have shut off the view of her.

Q. And you think it would, do you, if you had been on a converging course? The Virginian was not standing still, was she?

A. No, but she did not appear to be making the same speed at the time I noticed her that she did when we passed her. I mean that we drew away from her faster than we approached her.

Q. The Flyer turned back when she heard the crash, did she? A. Yes, sir.

Q. How long after the crash was it before the Flyer reached within speaking distance of the Strathalbyn?

A. Approximately two or three minutes. We turned very rapidly; got started back quick.

Q. How was the Strathalbyn lying at the time you arrived along side of her, with reference to the shore?

A. She would be lying with her bow pointed towards the—

Q. The main land? A. Yes.

Q. Lying with her bow towards the main land?

A. On that side, yes.

Q. The upper side of the Point?

A. Yes, toward Des Moines; between Pulley Point and Des Moines somewhere.

Q. And how was the Virginian lying?

A. She would be lying,—the Virginian was lying at right-angles to the Strathalbyn.

Q. And how far distant from her?

A. At the time we arrived, within speaking distance?

Q. Yes. A. About an eighth of a mile.

Q. Away from the Strathalbyn?

A. Yes; they had both backed up.

Q. Was there any movement of the Strathalbyn at the time you arrived along side her; was she still backing or going forward?

A. She appeared to be; I did not notice the water at the propeller, but she appeared to be turning towards Des Moines all the time. I don't know anything about her rate.

Q. You approached on which side? A. Her star-board side.

Q. What lights did you see on her at that time?

A. We got close up to her and then backed up.

Q. I mean on approaching her?

A. I didn't notice any lights particularly when approaching her, until we started to back up.

Q. How far were you away when you started to back up? A. About a ship's length.

Q. And what lights did you see then?

A. A green light and masthead light and side lights; the lights on the deck.

Q. Apparently lanterns?

A. Yes; they appeared to be moving back and forth.

A. In approaching the Strathalbyn prior to the collision, when did you first make out the hull of the vessel, if at all? A. Not until I saw these stern lights.

Q. After you had passed her?

A. As we were opposite her.

Q. You had not made out the loom of the vessel up to that time?

A. No. All I saw until I saw the stern lights were the signal lights.

Q. Could you then see the hull of the vessel?

A. When we got right opposite her, yes.

Q. Was she pretty low in the water?

A. Very low in the water; my impression was, until I saw the stern lights, that it was a tug-boat. That is what I thought all the time until I saw the stern lights, and then that indicated to me and I looked closer and was able to discern the entire vessel.

Q. Now, you went along side the Virginian and then returned to the Strathalbyn?

A. We approached the Strathalbyn and then went to the Virginian, yes.

Q. And then returned to the Strathalbyn?

A. Yes, sir.

Q. And you came along side, on which side, the second time? A. The starboard side.

Q. At that time in which direction was she headed?

A. She had continued to swing around and was headed towards Robinson's Point.

Q. How long did you continue along side of her as she went over towards Robinson's Point?

A. About ten minutes.

Q. And where was the Strathalbyn when you left her; how far from Robinson's Point?

A. I am unable to say definitely. I went inside then.

Q. Before you went inside, what was the position of the two vessels with reference to Robinson's Point; how far from Robinson's Point? A. About a mile.

Q. You think you were still a mile off Robinson's Point when you left them?

A. I am placing my judgment to this question from the distance we were to the shore to the right. I did not notice Robinson's Point definitely at that time.

Q. Where do you think the collision took place?

A. About midway between Robinson's Point and Pulley Point?

Q. In the center of the channel or towards which shore?

A. I would think it took place a little toward the right-hand shore.

Q. That would be how far from Robinson's Point?

A. About two miles.

Q. And you continued along side of the Strathalbyn for about ten minutes, and you think she only covered a mile during that time?

A. I doubt if she covered more than that. We were running very slowly, and we were running into the wind, too.

Q. In which direction was the wind that night?

A. The wind was blowing off the shore line; it was north of Robinson's Point.

Q. Was that towards Pulley Point?

A. Towards a point between Pulley Point and Des Moines, or really a little more towards Pulley Point.

Q. You think in a general direction from Robinson's Point inside of Pulley Point or south of Pulley Point?

A. The wind was blowing in a direction similar to, from Point Robinson to a point north of Pulley Point.

MR. HAYDEN: North or South?

A. South, yes.

(BY MR. BOGLE.)

Q. You think after the collision the Strathalbyn in going over to Robinson's Point was going directly into the wind?

A. Not directly, but in a general course towards the wind.

Q. And you think that would impede her progress?

A. Well, that would explain as to only covering a mile in ten minutes.

Q. That would keep her back? A. Yes.

Q. Was there very much wind, to have that effect upon her? A. There was a pretty good wind blowing.

Q. About how many miles would you say?

A. About ten miles an hour.

Q. Now, did you go inside before the Flyer left the Strathalbyn?

A. Well, I went inside and came out again and then went inside again and I was inside at the time we left.

Q. And you think that was about a mile from Robinson's? A. You mean at the time we left her?

Q. Yes, the last time?

A. To the best of my judgment, it would be a mile.

Q. You don't know which way the Flyer maneuvered in going away, in pulling off?

A. I know we pulled off ahead of her, because the boat was at our starboard.

Q. And crossed her bow in coming towards Tacoma? A. Apparently straight ahead of her.

Q. Apparently crossed her bow between the Strathalbyn and Robinson's Point?

A. That would depend which way she went. We were both headed towards Robinson's Point.

Q. And you pulled ahead?

A. Yes, toward Robinson's Point?

Q. And went on towards Tacoma? A. Yes, sir.

Q. What did the Master of the Flyer say when the lookout reported the vessel on the port bow?

A. He said nothing.

Q. That is the way the report was made? A. Yes.

Q. Did he acknowledge he heard that?

A. By blowing the whistle.

Q. He did not answer it in any way?

A. I heard no answer.

Q. Who was the lookout on the Flyer, do you know?

A. I do not.

#### RE-DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. The lights that attracted your attention on the Virginian, you say, were the port-hole lights on the side of the cabin; is that right?

A. No, it was the lights which shown from her port-holes.

Q. On which side of the cabin?

A. On the side of the hold, I believe. I have never seen the Virginian in daylight; I don't know whether the cabin or the hold.



Q. It was on the side of the ship? A. Yes.

Q. Did you notice whether or not those lights became more broad from the time the Strathalbyn was abeam of the Flyer until the Strathalbyn and the Virginian came into collision?

MR. BOGLE: That is objected to as leading.

A. I did not.

Q. You said the bow of the Virginian seemed to have swung over in towards the shore land on the Des Moines side, did you? A. I did.

MR. BOGLE: I object to that as not the testimony, and further on the ground that it is a cross examination of his own witness.

Q. Did that motion of the Virginian apparently take place while you were looking at her after the Strathalbyn was passing you and when did you look back and see the Virginian?

A. Between the time,—(interruptd)

Q. I will put it this way. As I recall your testimony is that you saw the Virginian after the Strathalbyn was abeam of you; that you had not paid much attention to her after you had passed her until the Strathalbyn was abeam of you? A. Yes.

Q. Now then, after the Strathalbyn was abeam of you and when you had observed the Virginian again, from that time on did this movement of the bow of the Virginian apparently take place then in that interval?

A. When I noticed the relative position in which the Virginian lay, the Strathalbyn had just passed us, and the Virginian still continued to lie with her bow pointed approximately toward Des Moines.

Q. Then as I understand you, did not or did you, see the Virginian swinging towards Des Moines after the Strathalbyn passed you?

MR. BOGLE: That is objected to as cross examination of his own witness and further leading and suggestive, and on the ground that the witness did not testify that he saw any movement or change in the course of the Virginian.

Q. That is the question I am asking, whether or not you saw it swing in toward the Des Moines harbor after the Strathalbyn passed you, or whether that

seemed to be a fixed course as far as your recollection is concerned?

A. The impression on me was that she was changing her course.

Q. That is the impression was conveyed to you that she was changing her course after the Strathalbyn had passed you?

A. Yes. I looked back to speculate as to which side they would pass. My first impression was that it would pass the same as we did, and when I looked back he seemed to be turning, and then I supposed they would pass on the other side.

Q. Now a good many questions have been asked you about these convergent and divergent courses of the Virginian and Flyer, and I want to ask you if it is not your opinion that if when the Flyer passed the Virginian the Virginian was on the course something like this, and the Flyer was on a course something like this (indicating), if when the Flyer drew further ahead and if both vessels had kept that divergent course, the lights on the Virginian would not have naturally become less visible or narrower in line?

A. They would. If anything, we were on a trifle more the same course.

Q. And if you were on more of the same course, then naturally if the Virginian held her course, the lights would still further disappear, if both the vessels held their own courses? A. They would.

Q. But as a matter of fact the lights of the Virginian seemed to be broader when you were further away than they were when you last saw her after passing her; is that correct?

MR. BOGLE: That is objected to as leading and suggestive and a cross examination of his own witness and the witness answered the question the other way, and counsel now attempting to have him testify differently.

Q. Well, tell what the fact is with regard to whether or not those lights got broader or not?

A. The fact is when I looked back there, the lights were brighter than I expected to see them.

Q. I want to ask you if during the time the Strath-



albyn was approaching you and before she got up to the Flyer, her red light ever, to your knowledge, disappeared?

A. It disappeared from my view immediately after they passed us.

Q. But I mean up to the time she passed you, from the time you saw her first, did the red light on the Strathalbyn ever disappear? A. It did not.

Q. Counsel has asked you if you have talked this matter over with me; I want to ask you whether or not I ever suggested to you any change in your testimony in the slightest particular whatever? A. You did not.

MR. BOGLE: There is no such suggestion as that.

Q. Are you telling about it the same story you told me the first time when we talked together about the matter?

A. In substance it is the same, as near as I gave you the first communication.

MR. HAYDEN: I will allow you, Mr. Bogle, to see the written report, if you want to.

MR. BOGLE: Go ahead and examine your witness.

RE-CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. You did not notice the range light and the masthead light on the Virginian at all, did you?

A. I noticed no lights except the masthead light and two side lights.

Q. I am talking about the Virginian?

A. Oh, no, I did not.

Q. When you passed the Virginian you saw these lights coming out of her port holes? A. Yes.

Q. How many? A. A row of lights.

Q. How many was it, eight or ten, or six or eight?

A. I would say at least eight or ten; they may not have all been port hole lights, but they were swung along the vessel.

Q. As you passed those lights were shining bright, directly out of the windows when you were abeam?

A. Yes.

Q. Did you notice those lights again up to the time you passed the Strathalbyn?

A. Not until after we passed the Strathalbyn?

Q. And how did they appear when you passed the Strathalbyn and looked back?

A. Well, they did not appear as bright as when we were abeam, but they were sufficiently distinct.

Q. Were they all in a row so that you could distinguish the different port holes from which they were shining? A. No, it appeared more of a haze of light.

Q. As though they were somewhat in line?

A. Well, they appeared sufficiently plain to indicate to me the direction in which the ship lay.

Q. Tell us how they indicated to you the direction in which the ship lay?

A. By the distance between the lights.

Q. That is between the individual lights or between the first and last? A. Between the first and last.

Q. What was the apparent distance between the first and last light when you looked back?

A. I gave an idea on the chart what direction I considered the vessel lay.

Q. Why did you consider it was lying in the particular direction towards Des Moines?

A. The fact that I could see the side lights; that indicated that she lay in that direction.

Q. But you could see her port lights?

A. Yes, if you want to call them.

Q. These port lights shining out of the port hole then? A. Yes.

Q. Now, as Mr. Hayden says, if the Virginian was along this course and the Flyer off here (indicating) in this converging course when you passed her lights were shining full? A. Yes.

Q. And as you drew up and looked back they would not be as broad as when you first passed her?

A. Not quite.

Q. How could you tell from looking back here the direction the Virginian was going, from this land?

A. From the fact that I could see them. If she was going the direction we were, or as she was originally, I would not expect to see them.

Q. Could you see each light distinctly, or a blur of lights? A. More or less of a blur.

Q. If the Flyer was on this converging course and

the Virginian on this course, wouldn't you be able to see that blur when you were at a point ahead of her here (indicating) and she was off back of you?

A. Our distances were so near parallel, I think not.

Q. And if you were on this converging course,— (interrupted)

A. We were not on divergent courses to any extent, but on the same course practically.

Q. If the Master of the Flyer testifies that he was on this diverging course, would that change your opinion any? A. It would not.

MR. HAYDEN: I object to that. The Master of the Flyer has not so testified.

A. I would consider he knew where he was going, but I would consider my opinion that we were going on the same general course.

Q. And you base your conclusion that the Virginian was changing her course, merely on the presumption that at the time you passed, you were on practically the same courses, and when you looked back, you were not?

A. When I looked back, she was not on the course I expected her to be.

Q. She was not on a parallel course with you; isn't that what you say; in other words, that you were further to the westward?

A. She was very near directly astern of us, but with her bow turned more to the left.

Q. And that is all you could tell, isn't it?

A. That is, yes.

Q. You don't know whether there was any movement or change in the Virginian after you passed her, do you? A. You mean in her progress?

Q. Any change in her course after you passed her?

A. I know she was pointed in a direction different from what she should have been if she had continued the same as she was.

Q. I understand that is what you want to get in here, but I don't think that is according to the facts.

MR. HAYDEN: I object to that.

A. I know her bow was turned in a different direction from what I expected to see it.

Q. You expected to see it in the same general course you were taking? A. Yes, sir, I did.

Q. And when you looked back it was not in the same general course you were on? A. It was not.

Q. But was more to your left?

A. It was pointed more to the left. The boat was not more to the left.

Q. And that was absolutely all you noticed, isn't it?

A. Yes, the bow was pointed more to the left.

Q. In other words, you were pointed inside Robinson, weren't you?

A. I don't know where we were pointed at that time. I was watching the boats.

Q. I think you testified you were pointed more that way?

A. We were at that time, but I don't know about it when we passed them. I was watching the boats then. If we changed our course, we must have been bearing away in here some place (indicating).

Q. The last time you noticed the Flyer's course she was headed inside Robinson?

A. At the time we first signalled to the Strathalbyn, we were.

Q. The Virginian was headed more off Robinson than you were at that time?

A. She was apparently headed in the same direction we were.

Q. When you looked back at the time of passing the Strathalbyn?

A. Oh, no; you were speaking of the time we were pointed inside Robinson.

Q. But you didn't look back at that time?

A. You asked what direction she was when we were pointed inside Robinson.

Q. But you didn't look back and don't know about that? A. When was that?

Q. After you had passed the Virginian and were pointed inside Robinson?

A. That is the time I noticed her; when we were abreast. She was going in apparently the same direction we were, and we had passed her very slowly and ran along parallel for a little way.

Q. And that was a little south of Pulley, you think?

A. I think so.

Q. But you didn't notice her after that?

A. I didn't notice her after we had drawn a little ahead and had signalled to the Strathalbyn.

Q. And the next time you noticed her she was bearing a little more to the left than you?

A. She was not bearing; she was headed that way; I could notice very little movement. It occurred to me that she had slowed down a little.

Q. And she was headed a little more to the left than you were?

A. Her bow was pointed a little more to the left.

(Witness excused.)

(Signature waived.)

MR. HARRY SWANSON, a witness called and sworn in behalf of the Libellant, testified as follows:

DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. What is your full name? A. Harry Swanson.

Q. Where do you live? A. Burton, Washington.

Q. How old are you? A. Nineteen.

Q. Have you ever had anything to do with knocking around on the water, in launches and boats?

A. I have, for the last seven years.

Q. In what vicinity and what neighborhood?

A. All the way from Hoods Canal down to Olympia and down that way, and I have had several long trips in larger boats.

Q. Were you on the Steamer Flyer coming from Seattle at the time the Strathalbyn and Virginian collided? A. Yes, sir.

Q. What were you doing on the Flyer when she got somewhere in the vicinity of Pulley Point?

A. I was coming outside then. I noticed we had passed the Virginian and that attracted my attention and I came outside.

Q. You had been where? A. In the main cabin.

Q. And you came out on what part of the Flyer?

A. Along midships and towards the bow.



Q. When you came out, had you overtaken the Virginian? A. We had just passed her a little way.

Q. Did you notice where Pulley Point was at that time?

A. I did not take very strict notice. Just a little west of us; just about opposite us.

Q. Were you out on the deck before the Flyer whistled to the Strathalbyn? A. Yes, sir.

Q. Did you notice the Strathalbyn prior to the time the Flyer whistled?

A. I noticed her quite awhile before that, yes.

Q. And what did you notice?

A. I noticed the red port light and the white range light or bow light; that attracted my attention mostly; that is how I managed to pick her out,—by those two lights.

Q. What kind of a light was this range light or bow light?

A. It was quite a large white light, pretty well up from the deck.

Q. How far away would you say the Strathalbyn was when you first saw both the white light and the red light?

A. Oh, she must have been a mile and a half anyway.

Q. Did you see any green light on the Strathalbyn?

A. I did, but not as she was coming towards us. I saw it after the collision.

Q. But you did not notice it as she came towards you? A. No.

Q. Did you watch these lights of the Strathalbyn closely or were you busy with other things during the time she was coming up?

A. No, I was watching first one boat and then the other all the time I was out until after the collision; after we had left the collision.

Q. What did you notice about the masthead light or the red light on the Strathalbyn, as to the way it was burning?

A. It seemed to be burning all right to me; so far as my experience showed. It was bright enough to be seen easily a mile and a half or two miles away.

Q. How about its flickering up or down or being steady?

A. It seemed steady to me; it was not noticeable to me that it flickered at all.

Q. Did you hear any whistles from the Flyer to the Strathalbyn?

A. I did not pay any particular attention to that, no.

Q. You don't know whether the Flyer blew?

A. If I remember right I think she did; I know she did now, but I would not say for certain that she did blow.

Q. You mean by that, that you have heard since the accident that she did blow A. Yes.

Q. But at the time you haven't any recollection of having heard it at the time; is that right?

A. That is right.

Q. Did you lose sight of the red light and the mast-head light of the Strathalbyn at any time before the collision?

A. No, sir. I could see them up to the time of the collision. That is the only way I could pick out the Strathalbyn, that is, by these lights.

Q. Did you notice any other lights on the Strathalbyn? A. After she passed us, I noticed the stern light.

Q. Could you see the Strathalbyn up to the time of the collision with the Virginian, that is, to know that they were approaching each other?

A. Oh, yes, I could make out the outline,—just about make out the outline of them.

Q. How was the Virginian lighted up?

A. I did not take such very strict notice of the Virginian, but I know she had several lights on her. She was pretty well lighted up. I did not notice,—I could not say whether she had any range light or any other lights. I got a glance of her through the cabin window and saw lights, but I could not say what lights.

Q. Now, about how far astern of the Flyer were the two vessels when they came together, in your opinion?

A. Oh, I would judge they could not have been more than half or three-quarters of a mile,—along there.

Q. After the collision, what did the Flyer do?



A. She circled around and went back to the wreck.

Q. Which way did she circle. A. To the left.

Q. What vessel did the Flyer first come up to after the collision? A. She came up to the Strathalbyn.

Q. Did you notice any lights on the Strathalbyn then?

A. I noticed a red light and range light and stern light; that was the first time I noticed the green light, when I came back.

Q. You did not notice the red light when you came back?

A. I did not take very strict notice of it, no.

Q. Have you any recollection now of having seen the red light when you came back?

A. I would not say for sure, no.

Q. You do recollect seeing the green light?

A. That was the side towards us and I certainly saw that.

Q. Do you recollect seeing the masthead light?

A. Yes.

Q. Do you recall how those lights were burning?

A. They were burning all right; bright enough to be seen easily.

Q. And how, as to whether or not they were burning steadily or flaring up and down?

A. I don't believe they were flaring up or down. It seemed steady to me, like other lights around the Sound that I have seen.

Q. After you came up to the Strathalbyn, where did you go?

A. I stayed right on the deck. I went up towards the bow in front of the pilot house.

Q. And what did the Flyer do?

A. She circled around, and the Captain got his megaphone and wanted to know if they needed assistance, and they said, no, and he turned around and went back towards Tacoma.

Q. Did you go up to the Virginian?

A. Well, I don't think we did. I think we circled right around and asked the Strathalbyn if she wanted assistance.

Q. Did they ask the Virginian?

A. No, I think the Captain hollered once, to my knowledge.

Q. After the Flyer had come back to the Strathalbyn, did she leave her and come towards Tacoma?

A. Yes.

Q. Did you notice any lights on the Strathalbyn when the Flyer was coming towards Tacoma, from her?

A. I didn't look back after that and I couldn't say how they were. When we left they were burning all right.

### CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. Your experience has been on small launches, pleasure launches?

A. Yes, and quite a bit on steamers. I have been out at night on the Sound steamers.

Q. In what capacity? A. Mostly as passenger.

Q. Do you know Mr. Foss, of the Foss Boat-house?

A. I don't know them very well; I have met them.

Q. Did they ever talk to you about this case?

A. Not anything really very much. Mr. Foss, the lawyer, was the first one who got me as a witness. He called me to his office and told me to be on hand if they needed me; that is all.

Q. Now you were inside the Flyer up to the time she passed the Virginian? A. Yes, sir.

Q. And where do you think she passed the Virginian?

A. It was about off Pulley Point as far as I could make out. It was dark and could hardly see the Point, but I came outside just about the time she passed Pulley Point, and we were a little ways past the Virginian.

Q. Was the Virginian up to the Point then?

A. Just about opposite the Point.

Q. And you were past the Point?

A. Yes, sir, we were past the Point.

Q. How far off the Virginian did you pass?

A. How do you mean?

Q. Which way did you pass her?

A. On the outside of her towards Vashon Island.

Q. You came up astern of her and passed off her starboard? A. Yes.

Q. How far were you off her starboard when you passed?

A. It is hard to judge; I don't know exactly, but as far as I could make out, she must have been about one-third of a mile.

Q. You were outside of her one-third of a mile?

A. Yes, sir.

Q. Did you notice the Virginian after you passed her?

A. I took a glance at her after we passed, or as we passed, and noticed that we were passing a vessel, but after I came out I glanced back and saw she was keeping up with us pretty well.

Q. She was headed in the same direction you were then? A. Yes, just about the same course.

Q. She was headed south? A. Yes.

Q. And were you headed more to the westward?

A. We were headed, yes, about Robinson's Point; I would not say whether to the west, but it seemed like almost the same course as she was, except as we had passed outside we were still off that way.

Q. You were still going off that way a little?

A. Yes, being outside of her yet.

Q. You heard the Flyer whistle to the Virginian, didn't you? A. I did not take particular notice, no.

Q. When did you first see the lights of the Strathalbyn?

A. After I had come outside I happened to glance up ahead and picked out these two lights; they were the only lights I saw on board at the time.

Q. You passed on which side, the Flyer?

A. The port side.

Q. And walked forward?

A. A little way past midships.

Q. And how long after you passed the Virginian before you made out the lights on the Strathalbyn?

A. Well, about a minute or a minute and a half, maybe. We stepped outside and it was almost as soon as I got outside that I noticed these lights ahead.

Q. Then you would say it was about three minutes or so after you passed the Virginian that you saw the Strathalbyn's lights?

A. Well, maybe about that; I don't believe it was that long.

Q. What lights did you see on the Strathalbyn?

A. The red port light and the head-light, range light as I call it.

Q. Did you see more than one white light on her?

A. That is all at that time.

Q. How far away was the Strathalbyn at that time?

A. She must have been about a mile or so,—a mile and a half, along there.

Q. Did you afterward see any other lights on her?

A. After she passed us I saw the stern lights.

Q. But prior to the time she passed you?

A. No, I did not notice any other lights except a couple of small port lights.

Q. Did you see her green light?

A. No, I didn't see it at all.

Q. Can you tell the direction she was going?

A. I could tell she was going on almost a course parallel to ours, only headed north.

Q. And in that position could you see her green light?

A. Hardly. She was quite a way in towards the shore from us, so that it would obstruct the view of the green light.

Q. And you passed her how far off?

A. About a half a mile, or not quite; between a quarter and a half.

Q. From the time you first picked her up until you passed her, you saw her red light all the time?

A. Yes.

Q. And you could see her red light as you passed her?

A. Yes.

Q. Was that a bright light?

A. Yes, bright enough to be seen.

Q. In your experience would you say it was an oil or an electric light?

A. Well, it would be hard to tell from my experience. I thought in all of those boats it would be an electric light, because that is what they burned, but I couldn't tell.

Q. Well, from the brilliancy,—the electric lights are more brilliant?

A. Well, sometimes they are, and it would depend on the size of the globe. In that kind of a light there is not much difference, from my experience. I had oil first on my boat and then electric light.

Q. But in that particular boat could you tell whether it was oil or electric light?

A. No, sir, I could not.

Q. When did the red light shut out?

A. I could see it almost up to the time of the wreck. That was about the only way I had of making her out; those two lights and the stern light.

Q. That is the masthead light, the stern light and red light? A. Yes.

Q. And you could see that up to almost the time of the wreck? A. Yes, sir.

Q. How long after you had passed the Strathalbyn was it before the two vessels collided?

A. Well, I should judge it would be perhaps two minutes or so, along there.

Q. After you passed the Strathalbyn?

A. After we passed the Strathalbyn.

Q. Did you hear any whistles blown by either the Strathalbyn or Virginian after you passed the Strathalbyn?

A. Not until a couple of minutes before the wreck. It was not that long,—when I heard three whistles and the Flyer answered; and that was the only whistles I heard.

Q. The Flyer answered then? A. Yes.

Q. What did she blow? A. Three whistles.

Q. You did not hear any other whistles, only the three? A. No.

Q. How long was that before the wreck?

A. About a couple of minutes, I guess.

Q. Then it must have been more than two minutes after the Strathalbyn passed and before the wreck,—I thought you so testified?

A. Oh, it was a little longer than that, I guess; two or three minutes.



Q. These three whistles were shortly after the Strathalbyn passed the Flyer?

A. Yes; the time I heard the three whistles it seemed like I hadn't hardly had it out of my mouth before they bumped.

Q. Then it would not have been two minutes?

A. No, it was a short time.

Q. Do you think it was half a minute?

A. Well, it might have been about that; it was along there.

Q. The two vessels at that time were half or three-quarters of a mile astern of the Flyer, you say?

A. About half a mile, I would say, about that.

Q. And in what direction were they at the time they collided; how did they bear from the Flyer?

A. I would judge at an angle,—it seemed we were out so far, I would not say just what angle, we being on the outside of them so far; it was a pretty large angle.

Q. She was off your quarter, wasn't she.

A. Along there.

Q. How many points would you say she was off, or the two vessels were off the course of the Flyer, extended?

A. Oh, at an angle of about 35 degrees, something like that.

Q. Then as I understand, the two vessels were well off to your left? A. Yes, sir.

Q. And at an angle of about 35 degrees off your port quarter? A. Yes, sir.

Q. Or 35 degrees off the line of your course extended? A. Yes.

Q. Where do you think they collided with reference to the two points of Pulley and Robinson?

A. I would judge a little less than half way between Pulley and Robinson, towards Pulley.

Q. A little nearer Pulley?

A. A little nearer Pulley, the way I looked over towards Des Moines at that time.

Q. And with reference to the channel between Pulley and Robinson?

A. Across there from Maury Island to the mainland, it must be about three miles.

Q. But where were the two vessels at the time they collided, with reference to that channel?

A. Oh, they were pretty well in line between Pulley and Robinson's, I would judge.

Q. Pretty well on a line between them and a little closer to Pulley? A. Yes, sir, they were.

Q. And you at that time were off to the westward of a line between Pulley and Robinson? A. Yes, sir.

Q. You did not notice any range light aboard the Strathalbyn?

A. That is what I call it; I guess it is a headlight on the larger steamers.

Q. You only notice one white light aloft?

A. Yes, one white light.

Q. After the collision when you returned to the vessels, how was the Strathalbyn lying?

A. I could not say exactly in what position she was; I did not notice the shore much, but from the way we were turned around, I would judge she was going in towards the shore.

Q. Where was the Virginian lying at that time?

A. She was lying a little off to the west of her.

Q. And in what direction was she pointed?

A. The Virginian was pretty well in towards the shore, headed about for the Strathalbyn.

Q. In the same general way as the Strathalbyn?

A. Just about.

Q. She was headed in to shore?

A. She was kind of swinging in that way; at the time we got back, they had swung off, but that was about the relative positions when I first noticed them, after we came back.

Q. Was the Virginian moving then?

A. No, lying there drifting.

Q. Do you know how the tide was?

A. I don't remember exactly. I know it was about half way in when we came to Tacoma.

Q. How far were the two vessels apart when you came back to them after the collision?

A. They were within perhaps 700 feet apart.

Q. And the Virginian was further out in the channel than the Strathalbyn? A. Yes, sir.



Q. And were they both on parallel courses at that time when you returned to them?

A. They were lying in their general courses, but their bows were not headed right.

Q. But were they headed in the same direction?

A. No, not at that time.

Q. The Strathalbyn was headed in towards shore?

A. Yes.

Q. Did she have any movement?

A. No, not at that time; she was lying dead.

Q. And the Virginian was headed in what direction? A. A little towards the shore, too.

Q. As much as the Strathalbyn?

A. Well, not as much.

Q. At what angle towards each other; was it something like this (indicating)?

A. Oh, I would say an angle of about 20 degrees.

Q. That is the angle between the two vessels?

A. Yes; I don't know exactly what it would be.

Q. When you returned to the Strathalbyn, did she have any movement then; you came back to the Strathalbyn?

A. We first came to the Strathalbyn and circled around and headed back and came around again, and just paused for a moment at the Strathalbyn.

Q. And at that time did the Strathalbyn have any movement?

A. At the time we came back, if I remember right, she had turned around and was heading back towards Tacoma, but I am not certain about that.

Q. She was swung around?

A. That is the way I remember, but I would not say for certain.

#### RE-DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. Did you when the two vessels were coming together, notice how they were approaching each other on an angle?

A. I could not say exactly. I think they were swinging; the Strathalbyn a little towards shore, but from the position of the lights you could tell she was swung a little.

Q. But I want to get at whether you could tell which side, if any, the Virginian and Strathalbyn were coming together?

A. No, I could not tell at all.

(BY MR. BOGLE.)

Q. Could you get any real information from looking back as to what the two vessels were doing at that distance?

A. No, I could not. I could tell they were getting pretty close to each other and along in the same course pretty well, but I could not say exactly what they were doing.

(Witness excused.)

(Signed waived.)

(Filed May 28, 1914.)

# DEPOSITIONS OF W. L. MAC QUARRIE ET AL.

Testimony of W. L. MAC QUARRIE, FRANK W. LEACH, F. P. McINTYRE, and ANDREW WAADNE, witnesses on behalf of Libelant, taken at Tacoma, Washington, March 25, 1914, before Raymond J. McMillan, U. S. Commissioner, under the order of the above named Court, and stipulations by proctors of the respective parties, it being particularly stipulated that the testimony of the above named witnesses may be used without objection on account of the said witnesses not reading or signing their testimony, which signing and reading is particularly waived.

The Libelant appearing and being represented by Mr. W. H. Hayden, of Proctors for Libelant,

And the Respondent and Cross Libelant and Claimant appearing and being represented by Mr. Lawrence Bogle, of Proctors.

WHEREUPON, the following proceedings were had and done and testimony taken, to-wit:

W. L. MACQUARRIE, a witness produced on behalf of the Libelant, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. What is your full name? A. W. L. Macquarrie.

Q. How old are you, Mr. Macquarrie?

A. I am thirty-four now.

Q. What is your present business and what was your position on the 12th day of January, 1912, that being the date the Strathalbyn and Virginian were in collision? A. Agent for the American Trading Co.

Q. With your offices where?

A. At that time 1320—let's see, now,—that was in 1912.

Q. I think if you just give us generally the building or city.

A. 1322 National Realty Building.

Q. In Tacoma? A. In Tacoma.

Q. What position did you occupy with the American Trading Company? A. Agent.

Q. Did the American Trading Company have anything to do with the steamer Strathalbyn during that trip, 1912?

A. She was under time charter to our Company.

Q. Did they have anything to do with the cargo that was aboard her? A. Furnished the cargo.

Q. When did you first hear that the Strathalbyn and the Virginian had been in collision, about what time?

A. About fifteen—ten or fifteen minutes to nine P. M., the night of March 12th—of January 12, 1912.

Q. Now, what did you do then?

A. The first thing I did was to get hold of Mr. Leach on the telephone, told him of the report, and asked him to accompany me down town.

Q. You went where?

A. Went direct to the office and sent a night letter from there at nine-thirty advising the American Trading Company in San Francisco that it was reported the Virginian was in collision with the other steamer the—

Q. Strathalbyn?

A. Strathalbyn; and that I would wire them further when I got full particulars.

Q. Then, what did you do?

A. Then I went up to the Foss Boat House and asked them to have a launch ready to take me to the steamer. I went down to the launch house, and about

that time the Virginian was coming in. I went over to the Virginian—do you want this in detail?

Q. Go ahead, yes.

A. When she drew close to the wharf I called out to the pilot on the bridge of the Virginian and asked him—

MR. BOGLE: I object to any conversation you had with the pilot; just tell what you did.

MR. HAYDEN: Q. Go ahead and tell what conversation you had with the pilot.

MR. BOGLE: I object to it.

MR. HAYDEN: Just let him put his objection in, and then go ahead and testify.

A. I asked him if it were true—I would not say it was the pilot I called out to on the bridge, but I presumed the pilot was on the bridge—I called out and asked if it was true that there had been a collision with the Strathalbyn, then he spoke and replied, "Yes," that he thought she was in bad shape. I asked him if he thought it was necessary for us to send tug boats out, and he said he did not know but she was in bad shape as far as he could see. So then I went to the Foss Launch House and went out to meet her.

Q. Do you know about what time it was you left the Foss Launch House?

A. It must have been getting close to eleven o'clock at that time.

Q. And where did you first see the Strathalbyn?

A. Oh, we were a little beyond Dash Point before we were satisfied in our own minds that it must be the Strathalbyn. We saw the lights of the steamer somewhere between Brown's Point and Dash Point, in that latitude somewhere.

Q. That is, you were between Brown's Point and Dash Point when you saw the light of the Strathalbyn?

A. Exactly.

Q. Where was the Strathalbyn?

A. We could see her off our port bow about five degrees.

Q. Between what points was the Strathalbyn?

A. She would necessarily have to be between Point Robinson and Dash Point.

Q. What light did you first see on the Strathalbyn?

A. The first light that I saw was a red light.

Q. Well, did you make out that light as being on the Strathalbyn at first? A. No.

Q. Well, go ahead and tell about it?

A. As we drew nearer we distinguished the head light,—masthead light—shortly afterwards we were able to distinguish the contour of the ship, hence knew it was the Strathalbyn.

MR. BOGLE: This was all after the collision, was it, Mr. Macquarrie? A. Yes

MR. BOGLE: I object to it as incompetent and immaterial.

MR. HAYDEN: Q. Were you able to tell—what light did you see on the Strathalbyn? What light were you able to see on the Strathalbyn first—what light was it? A. Red light.

Q. The red light. When you first saw the red light, did you know it was the light on the Strathalbyn?

A. No, I did not. I spoke to the launch man and asked him what light he thought it was, and he said that was Point Robinson light.

MR. BOGLE: I object to any conversation between himself and the launch man as immaterial.

MR. HAYDEN: Q. Is that the light that subsequently turned out to be the Strathalbyn light?

A. Same light.

Q. Did the masthead light and the side light—red light on the Strathalbyn—appear to be burning with a flickering flame that was going up and coming down and going up and coming down and going out, or always burning? Or were they burning with a steady glow?

A. My recollection is they were burning steadily; I did not observe any fluctuations in the light.

Q. Are you able to estimate the distance the Strathalbyn was away from the launch when you first saw her lights?

A. Oh, I should judge from the time we would take to get to her, from the time we saw her, was a matter of four or five miles.

Q. Did you board the Strathalbyn from the launch after you saw the lights? A. Yes, sir.



Q. Who do you remember was with you in the launch that went out to her?

A. Mr. Leach was along with me, and there was the launch man and the engineer, and there was some other third party there. There were three in the launch besides Mr. Leach and myself. They, I presume, were all employes of the Foss Launch Company, I presume they were, I don't know.

Q. Did you remain on the Strathalbyn until she reached Tacoma harbor? A. Yes, sir.

Q. Where did she tie up?

A. At a buoy between the St. Paul Mill and the Oriental Dock.

Q. Did Mr. Leach go aboard the Strathalbyn with you when you got aboard of her?

A. No, sir, nobody went aboard with me until she was tied up to the buoy.

Q. What became of the launch after you went aboard of the Strathalbyn?

A. After I went aboard the Strathalbyn the launch shifted from the port side of the Strathalbyn and took a turn around the stern of the Strathalbyn and stayed in our starboard bow and took a look at the damage, and after I discussed the accident with the captain and the pilot, they decided that they would beach the steamer near the St. Paul Mill wharf, and whistled for the launch to come alongside; and we told Mr. Leach to go to the St. Paul Mill wharf and see that the logs were moved out of the way, if there was anything in the way, and put a lantern at the end of the wharf so the pilot would be able to tell where to beach the steamer. The launch then went ashore to do that, then it turned around and came back to the steamer, and in the meantime the plans had been changed and it was decided to tie the steamer to the buoy. The launch was called alongside again and told to be prepared to land a line to the buoy. We were still a considerable distance away from the buoy, and we sent the launch back to pick the lantern up, as I remember, and the launch stayed by to take the lines to the buoy.

Q. Did the Strathalbyn tie up at the buoy?

A. Yes, sir.

Q. Did Mr. Leach go with the launch to the dock and also to the buoy?

A. Yes, he was in the launch all the time till she was tied up, made fast to the buoy.

Q. After the Strathalbyn was in the Tacoma harbor, did your Company do anything in connection with the unloading of her cargo. A. Yes, sir.

Q. Did you make any arrangement for the unloading of the cargo with the owners of the ship.

A. Yes, sir.

Q. What was that arrangement?

A. The morning after the accident we all met in Dodwell & Company's office, and the Captain gave me written authority to proceed with the discharging of the forward deck load.

Q. Did you proceed to do that?

A. We did immediately.

Q. Were you paid for so doing it, in accordance with your arrangement? A. We were.

Q. What was your arrangement?

A. The arrangement for discharging the deck load was actual cost plus ten per cent.

Q. I call your attention to Libellant's Identification R-71, and the vouchers attached thereto, being a statement of an account for \$1007.36, and ask you just briefly what that was to cover—what that actually did cover?

A. Well, the statement itself is explanatory, it is the actual cost plus ten per cent account discharging forward deck cargo on the S. S. Strathalbyn.

Q. Were you paid \$1007.36 in settlement of that account?

A. We were; this here proves it there (indicating on Exhibit).

Q. The vouchers attached to it are the expense vouchers that were incurred?

A. Yes, sir, are the expense vouchers.

Q. The ten per cent of \$91.57 was for what?

A. That is to cover our work in connection with it, the furnishing of the men, the use of stevedore tools, the clerical work, involving the advancing of monies, etc.

Q. What have you to say as to whether or not that is a reasonable bill for the work that was done?



A. Why, it is very reasonable for the work that was done.

Q. Now, I call your attention to Libellant's Identification R-70, being a bill for \$102.69 for disbursements to the American Trading Company for launch hire, lanterns, oil, tallymen, etc., and ask you if you incurred that expense?

A. Yes, sir, those are expenses that were incurred by us.

Q. In connection with the Strathalbyn?

A. In connection with the accident,—as the result of the accident. That is to say, we paid these bills. Some of them you will notice were incurred by the surveyor and the Captain, and items—the list shows exactly what each bill was for and they were properly O. K.'d by the Captain and paid by us.

Q. The vouchers are attached?

A. Yes, sir, the vouchers are attached.

Q. Were you paid \$102.69? A. Yes, sir.

Q. You were reimbursed that amount?

A. We were. We did not charge any commission. There was no  $2\frac{1}{2}$  per cent commission; disbursed that at actual cost.

Q. You were paid these respective amounts by Dodwell & Company.

A. Dodwell & Company, yes, sir.

#### CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. Your arrangement for doing this work was made with the Captain of the vessel? A. Yes, sir.

Q. As far as the longshoring work was concerned, it was merely for removing the forward deck cargo?

A. Yes, sir.

Q. Who is Mr. Leach?

A. Mr. Leach is super-cargo for the American Trading Company, working under my direction.

Q. He was super-cargo on the Strathalbyn?

A. Yes, sir.

Q. He was not aboard at the time of the collision?

A. No, sir.

Q. What do you mean by super-cargo?

A. He has the—all the orders of the different kinds

of cargo that are going on the boat, and he has to see that all are set in proper place and proper spaceage is given to the vessel; keeps a plan of the load and keeps a plan of the direction—looks after all the things in connection with the handling of the cargo.

Q. He is sort of a superintendent?

A. Super-cargo is an official term given that class of work.

Q. What does he do with the loading plans, etc., are they turned over to you?

A. Turned over to the office.

Q. Who is Bernard Brereton?

A. Bernard Brereton, he is a lumber inspector.

Q. Employed by you for what purpose?

A. On the Strathalbyn, he was employed to inspect the quality of the cargo shipped and pass on the grades.

Q. Was that before she sailed, before the collision, or after the collision?

A. Prior to the collision. After the collision I believe he was employed by Dodwell & Company as—no, I am mistaken I guess. No, he was employed by us prior to the collision inspecting the entire cargo shipped.

Q. This bill, Libellant's Identification R-70, Bernard Brereton, services \$7.50, is not for inspecting the lumber?

A. That was after the collision; that was after tallying the lumber off the deck load. The Captain gave us authority to employ men on his behalf to take it off, and he happened to be one of the employes employed to take it off.

MR. BOGLE: I think as long as we have this matter up for adjustment between the parties that I will not take up the record. That I will just make a general objection, and if I want to make any objection to any of these matters later, I can do it.

Q. You are still agent for the American Trading Company? A. Yes, sir.

Q. The American Trading Company is interested in this suit as owners of the cargo, are they not?

A. Well, the head office of the company is in San

Francisco, but to what extent they are interested I don't know. They carry insurance.

Q. They were the owners of the cargo. Any damage to the cargo they would be interested in, unless they were insured.

A. They are insured, and of course these particulars are all in the hands of San Francisco, and I am not versed in that at all. They attend to all the insurance. I understand that the cargo is insured by blanket insurance, even before it is put aboard the vessel. They carry insurance all the time. That is my understanding.

Q. All you know is they were the owners of the cargo and that the cargo was damaged to some extent?

A. They were the owners of the cargo prior to its being put aboard the steamer, yes, sir.

Q. Does the ownership of the cargo pass from your Company when put aboard the ship?

A. I cannot tell you that, what their relations are in relation to the bills of lading and other documents.

Q. Who first told you about this collision? Where did you get your information?

A. Somebody called me up on the telephone shortly after the Seattle boat arrived—at the same time the Seattle boat arrived—who it was I cannot say, I have forgotten.

Q. You don't remember who called you up and told you?

A. I am inclined to believe it was a reporter for one of the newspapers.

Q. Do you remember what time you left Tacoma on this night to go out to meet the Strathalbyn; what time it was the launch left here?

A. I did not look at the time, but it must have been in the vicinity of eleven o'clock.

Q. How long with reference to the time the Virginian arrived at Tacoma after the collision?

A. She must have tied up around two or two-thirty.

Q. No, I say how long after the Virginian arrived before you left in the launch?

A. Oh, why, we left right away.

Q. Do you know what speed this launch was making?

A. That launch would probably run along nine or ten knots an hour.

Q. That is what you would estimate it to be?

A. Oh, roughly, yes.

Q. You had passed Brown's Point before you picked up any steamer ahead of you, hadn't you?

A. I don't remember of seeing any other steamer prior to that time.

Q. Had you reached Dash Point when you picked up this red light which you say afterwards turned out to be a red light on the Strathalbyn?

A. We picked that up prior to reaching the latitude of Dash Point.

Q. That was before you reached Dash Point?

A. That we distinguished the red light, yes.

Q. How close were you; were you to Dash Point? How far south of Dash Point at the time you picked up this red light?

A. My recollection is that we were practically midway between Brown's and Dash Point, right close to the shore. We were really skirting the coast between Brown's Point and Dash Point.

Q. About how far out?

A. Oh, quarter of a mile, possibly; it is difficult for me to tell after night like that.

Q. Where were you personally standing on this launch?

A. When I distinguished the light I was standing forward,—forward of the house.

Q. On the deck of the launch?

A. On the deck of the launch, forward of the house.

Q. You were out where your view was unobstructed,—you were not looking through any glass windows? A. Exactly, I was outside.

Q. You were out for the express purpose of finding the Strathalbyn? A. If possible.

Q. Keeping as sharp a lookout as you could?

A. Yes, sir.

Q. And where was the Strathalbyn, approximately, at the time you first picked up this red light?

A. She was off our port bow five degrees, I should say.

Q. Where were you, or rather, where was she located with reference to Robinson's Point?

A. I could not say as to that; she seemed to bear a position between Robinson's and Dash Point, the way we caught her light first.

Q. Was she in line between the launch and Robinson Point? A. What is that?

Q. When you first picked up this light, was she in line between your launch and Robinson's Point?

A. Approximately, except that she was a little to our port,—off our port bow.

Q. Robinson Point was more straight ahead of you? A. Exactly.

Q. How did this red light appear, was it a bright light? A. It was very bright.

Q. Very bright. How far do you judge you were from the Strathalbyn at that time?

A. Oh, roughly, four or five miles.

Q. She was, do you think, within half a mile of Robinson's Point?

A. I could not say as to that.

Q. Could you see the Robinson's Point light very plain, too? Did you notice that?

A. We saw this red light first. We were in doubt whether it was Robinson's Point or steamer's light, and shortly after we distinguished the Robinson lights.

Q. You saw the steamer's light before you saw the Robinson's Point light?

A. We did; in fact, we thought at first it was Robinson's light.

Q. You afterwards ascertained it was not Robinson's Point light? A. Oh, certainly.

Q. You picked up this steamer's light before you picked up Robinson's Point light?

A. Yes, the light we observed first.

Q. The steamer light? A. Yes, the steamer light.

Q. Before you saw Robinson's Point light?

A. Yes, sir.

Q. What light is there on Robinson's Point?

A. Red light, also.



Q. Steady light? A. Flashing light.

Q. That is a red flash?

A. That is my understanding of it.

Q. Do you remember on this night when you saw it whether it was steady or flashing light?

A. Didn't pay particular attention to the light, because we came to the conclusion this was the Strathalbyn, and our minds were centered altogether on her.

Q. Where did this Robinson's Point light appear with reference to the red light on the Strathalbyn?

A. I did not observe that closely at all.

Q. Well, was it further to the north or was it almost on the same line. A. It was more ahead of us.

Q. Did you notice both of the lights at the same time? A. No.

Q. Now, how long did it take you after you picked up the red light to reach the Strathalbyn, if you have any recollection of that time now?

A. Oh, my recollection would be anywhere from fifteen to twenty minutes.

Q. After you first picked it up?

A. After I had first seen it.

Q. How did you navigate the launch after you first picked up this red light?

A. Why, merely told the launch man to make for the light. She had to alter her course a little bit, of course, because she was not directly ahead of us, she was more on our port bow. We had to alter our course a little to go over to her.

Q. As you approached her, how did your course lie with reference to the course of the Strathalbyn?

A. When we approached her?

Q. As you approached her? Was she headed more down the Sound, parallel?

A. No, she was coming towards Tacoma.

Q. Were your courses parallel, or were you approaching her on her port side?

A. We were approaching her on her port side.

Q. What would you judge was the angle of the courses of the two vessels as you approached the Strathalbyn?

A. You mean, which direction was the launch going

and which direction was the Strathalbyn going?

Q. Yes; you were approaching her on the port side. What would you say was the angle between your course and her course?

A. Oh, from the time we set our course for the Strathalbyn?

Q. After picking up the red light?

A. After picking up the red light she was, I should judge, five or six degrees to our port bow. Consequently, we would have to alter our course that much to join her. She was coming towards us slowly all the time, of course.

Q. In other words, what I am trying to get at is this: Was she over towards Maury Island—is it?

MR. HAYDEN: Yes, I think Robinson Point is on Maury Island.

A. Yes, she was over on that side.

Q. She was following along that course and headed towards Brown's Point?

A. She was headed towards Tacoma as near as I could see; of course, you could not tell just what course she was taking.

Q. Her nose was towards Tacoma; that would be to pass off Brown's Point?

A. Naturally she would have to, unless for some reason she was coming over to hug the other shore.

Q. Afterwards you arrived along side of her, didn't you? A. Yes, sir.

Q. Could you tell at that time which way she was headed?

A. Certainly; well, we could tell she was headed towards Tacoma, but when it comes to the exact course she was laying, I am not enough of a nautical expert to tell which way her course was laid, except she was going in a general direction towards Tacoma harbor.

Q. Were you approaching her on her port bow?

A. Yes, sir.

Q. After you picked up the light, you changed your course and were headed towards her port bow?

A. We were headed towards her port quarter, then came up around the port side.

Q. What other lights did you see as you approached her?

A. Why, I did not pay any attention to lights after I had seen the red light, and I distinguished it was the Strathalbyn.

Q. I thought you said you saw her masthead light?

A. Yes, I did, that is how we distinguished it was the steamer, when we saw both masthead and starboard lights.

Q. When did you see the masthead light?

A. It was shortly after we saw the red light. It was up higher, and probably we would have seen it right away if we had looked high enough.

Q. That was before you had changed your course?

A. Yes, sir. We altered our course immediately; we decided it was the Strathalbyn.

Q. Did you stay out on the forward deck of the launch then? A. Yes, sir.

Q. Up to the time you arrived? A. I did.

Q. Paid no further attention to the light? A. No.

Q. Did you see her starboard light at all when you were approaching her? A. No.

Q. From the position you approached her, could you have seen the starboard light if it had been burning?

A. I do not believe we could, the way my recollection determines that course we were taking.

Q. You were out there where you could have seen it, weren't you? You were out on the launch's forward deck?

A. If we had been approaching her at such an angle, it was visible, yes.

Q. But you did not see it?

A. I have no recollection of seeing it.

Q. If it had been burning, do you think you would have seen it? In other words, were you approaching at such an angle that you could have seen it if it had been burning?

A. My recollection is we were approaching it from such an angle it would have been impossible to see it.

Q. How far was the Strathalbyn south of Robinson's Point when you arrived along side of her?

A. I am not enough familiar with those distances to tell you that.

Q. I understood you to say you paid no particular attention to the lights after you picked them up and changed your course for the Strathalbyn?

A. That is correct.

Q. Did you see any other boats in that vicinity at the time you rounded Robinson Point until you were along side the Strathalbyn?

A. Did you see any other boats?

Q. Yes, did you notice any other boats?

A. There was nothing remaining distinct in my memory that would make me think of any other boats. No doubt at that time of night there must have been boats coming back and forth.

Q. Did you notice the Indianapolis pass the Strathalbyn as you were approaching the Strathalbyn?

A. No. You see we met her at such a time at night that the Seattle boats would not be running any more. The last boat gets into Tacoma about eleven o'clock; there are none leaves for Seattle, so we could not have seen any of those.

Q. You were basing it somewhere between eleven and eleven-thirty that you reached the Strathalbyn?

A. It would be later than that.

Q. How far did you say that she was south of Robinson Point when you arrived along side?

A. Well, I told you I was not familiar enough with the distances out there to tell you on that point.

Q. Did you notice Robinson Point light any time after you first picked up the steamer?

A. No, sir, after we found it was the Strathalbyn we never had any more thought of lights then.

(Witness excused.)

FRANK W. LEACH, a witness produced on behalf of the Libellant, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. What is your full name? A. Frank W. Leach.

Q. You were in the employ of the American Trad-

ing Company in January, 1912, the night that the Strathalbyn and the Virginian came into collision?

A. Yes, sir.

Q. Had you been in their employ for some time prior to that? A. Yes, sir.

Q. Are you still in their employ? A. Yes, sir.

Q. Have been ever since that time? A. Yes, sir.

Q. Did you go to the steamer Strathalbyn on the night of the collision with the Virginian? A. Yes, sir.

Q. How did you go to her? A. In a launch.

Q. Who was with you in the launch?

A. Mr. Macquarrie and two or three launch men.

Q. Do you know about the time you left Tacoma?

A. Oh, sometime between eleven and twelve o'clock, I should say a quarter past eleven, likely.

Q. Do you remember what first attracted your attention to the Strathalbyn as you were going out to meet her? A. The lights.

Q. Do you remember where your launch was positioned when the lights first attracted your attention to her? A. Why, between Brown's and Dash Point.

Q. What lights first attracted your attention?

A. The side light.

Q. What side light?

A. The port light,—the red light.

Q. Whereabouts was that light located with reference to Dash Point and Robinson Point?

A. Well, it was between the two points, perhaps a mile and a half or two miles off of Dash Point.

Q. Did you see any other lights than the red light on the Strathalbyn? A. Saw the masthead light.

Q. Did you observe whether the red lights or masthead light were flickering lights or steady lights?

A. Why, they were steady lights.

Q. How did the launch approach the Strathalbyn after you saw her lights?

A. How do you mean? From which side?

Q. Yes. A. From the port side.

Q. When you saw the red light, did you have any difficulty in distinguishing what light that was when you first saw it?

A. Why, when we first saw it we did not know but



what it was Robinson Point light, but it was only a matter of a minute or two until we decided it was the steamer light.

Q. When you decided it was the steamer light, what did the launch do?

A. We started off towards it.

Q. Did you change the course of the launch?

A. Yes, sir.

Q. Now, then, when you first came up to the Strathalbyn, did you go aboard of her the first time? A. No.

Q. Who did go aboard of her. A. Macquarrie.

Q. You say you approached the Strathalbyn on the port side? A. Yes, sir.

Q. How did you approach her?

A. Why, we rounded the boat and came up over towards the stern, up to a life boat that was hanging over the side, and Mr. Macquarrie got in the life boat.

Q. After Mr. Macquarrie got aboard the Strathalbyn, where did the launch go?

A. Why, we dropped astern and went around astern up there to the bow on the starboard side to see how badly she was damaged.

Q. Then what did you do?

A. Well, we laid off the starboard bow until they hailed us from the bridge and asked us to go in to the St. Paul Dock and the waterway to the east side of the St. Paul Dock, to take away any scows or anything in the way so they could beach the steamer; and to put a man with a lantern on the wharf.

Q. Did you go with the launch to the St. Paul Dock?

A. Yes, sir.

Q. Did you put a man on the dock with a lantern?

A. Yes, sir.

Q. Then, what did you do?

A. Went back to the Strathalbyn?

Q. Did you observe any lights on the Strathalbyn as you were approaching her from the St. Paul Dock?

A. Yes, sir.

Q. What lights did you see?

A. Two side lights and the masthead light.

Q. What side lights—what was the color of the side lights?

A. Green and red and white masthead light.

Q. How did you see the green and red lights with respect to the time of seeing them?

A. I saw them simultaneously.

Q. You saw both of them at the same time?

A. Yes, sir.

Q. When you saw the masthead light and the two side lights, about where was the Strathalbyn?

A. Just this side of Brown's Point.

Q. Did you then go up to her? A. Yes, sir.

Q. Did you go aboard of her the second time?

A. No.

Q. And you saw the masthead light and the red and green lights. Did those lights appear to be flaring up or down or appear to be burning steadily?

A. Burning steadily.

Q. What would you say as to whether or not the lights were bright or dim?

A. Why, they were the usual steamer lights; they were bright lights.

Q. Did you go aboard the steamer after you reached her coming from the St. Paul Dock? A. No.

Q. What did you do?

A. Why, they concluded they would not beach her over at the St. Paul Dock.

Q. Aboard the steamer they concluded that?

A. Yes, sir; and ordered us to go to the buoy and put a lantern on the buoy and prepare to make her fast to the buoy.

Q. Then, what did you do?

A. Why, I got on to the buoy with the lantern and sent the launch over to the steamer to get a line, as her capstan was gone and she could not heave herself into the buoy. We had to get the line with the launch.

Q. You say you got on to the buoy? A. Yes, sir.

Q. How did the steamer appear to be approaching the buoy? A. Why, head on to it.

Q. Did you see any of her lights as she was approaching the buoy. A. Yes, sir.

Q. What lights? A. Both of them.

Q. You speak of both of them, what do you mean?

A. Both side lights.

Q. Did you also see the masthead light then?

A. Yes, sir.

Q. I presume the vessel tied up at the buoy?

A. Yes, sir.

Q. Then what did you do? A. Went aboard of her.

Q. Did you at any time observe from any point forward of the red light whether or not you could see that light outside of the stanchions, and if so state where you were positioned and what you saw?

A. Why, not that night, the next day I did. I stood on the forecastle ahead, possibly ten feet forward of the break of the forecastle and could see the lights on the outside of the stanchions, also see it from inside of the stanchions on the forward deck.

Q. How did it appear with respect to the stanchions where you looked at it from the inside of the forward deck?

A. You could see very little of it from inside the stanchions.

Q. Did you see it inside the stanchions or through the stanchions? A. Inside the stanchions.

MR. BOGLE: I object to that as leading.

MR. HAYDEN: Q. Were you super-cargo while this deck cargo was being loaded. A. Yes, sir.

Q. Do you know the size of the stanchions?

A. Yes, sir.

Q. What was the size? A. 6 by 12.

Q. 6 by 12? A. Yes, sir.

Q. How were they placed along the rail of the ship? Was the narrow side towards the rail or the broad side? A. Broad side.

Q. Did you notice whether or not the stanchions were perfectly perpendicular, or otherwise.

A. Why, they were not.

Q. How were they positioned?

A. They were drawn in at the top.

Q. What was your own idea of the extent to which they were drawn in?

A. Why, you mean relative to the top and bottom of them?

Q. Yes.

A. I should say the top of them was—oh, from a

foot and a half to two feet further towards the midships of the boat than the bottom of them.

CROSS EXAMINATION BY MR. BOGLE.

Q. Mr. Leach, have you talked this matter over with Mr. Hayden and Mr. Macquarrie? A. Yes, sir.

Q. When did you talk it over last? A. Why—

MR. HAYDEN: I just want to object to this testimony as immaterial.

A. Only once, last week sometime—let's see, last Friday I think it was.

Q. You reside in Tacoma, do you. A. Yes, sir.

Q. As super-cargo, Mr. Leach, what are your duties with reference to the loading of the steamer?

A. Everything is in my charge; storage.

Q. Is the loading of the deck load—is the forward deck loading in charge of you? A. Yes, sir.

Q. Manner of the loading of it? A. Yes, sir.

Q. And the amount of cargo going on the forward deck? A. Yes, sir.

Q. Do you know how much cargo went on the forward deck of the Strathalbyn?

A. No, I could not say exactly.

Q. Did you keep any record of it?

A. We keep a record of the amount of deck load, but not of the upper deck.

Q. Did you have a loading plan of the steamer?

A. Yes, sir.

Q. Does that show the amount of deck load?

A. Approximately the amounts only; that is, the loading plans show approximately the amounts only. There are figures for the under deck and on deck separate, but not the two decks separate.

Q. That is, you mean the forward and after decks?

A. The decks are not separate.

Q. Where was this cargo loaded, Mr. Leach?

A. In Tacoma.

Q. What mill? A. That is, the fir cargo?

Q. Where was the deck cargo loaded?

A. Deck cargo loaded principally at North End Mill.

Q. When was that loading completed?

A. On the 11th of—January 11th.

Q. Was that the day before the steamer sailed?

A. Yes, sir.

Q. And as soon as the cargo was loaded did she shift to the buoy? A. Yes, sir.

Q. When did she shift to the buoy, on the 11th?

A. The night of the 11th.

Q. When did she sail? A. The night of the 12th.

Q. Was anything done with reference to the cargo after she finished loading on the night of the 11th, up to the time of sailing on the 12th?

A. Nothing done with the cargo.

Q. Was that cargo all secured and properly lashed before leaving the mill the night of the 11th?

A. No, we lashed afterwards.

Q. When? A. The mate lashed it the next day.

Q. Were you aboard when the cargo was lashed?

A. I was aboard after it was lashed; not at the time they lashed it.

Q. What size timbers went on the forward deck?

A. Why, it was a miscellaneous cargo, principally small lumber. There were a few large timbers down next to the deck.

Q. What was the size of those?

A. Oh, I could not say, they were, I should judge, 16 by 16 and 14 by 14, stuff of that kind.

Q. How long? A. Oh, 50 or 60 ft. long.

Q. How many pieces of that approximate size were there, Mr. Leach? A. Oh, seven or eight, I should say.

Q. What was the next largest size?

A. I don't think there was anything larger than that; I would have to look up the records to tell just what it was. There were some timbers too heavy to handle by hand when we came to discharging them; that is the only recollection I have of it.

Q. Have you any recollection of the sized timbers loaded on the forward deck?

A. I think I could get at it, yes.

Q. I would like to have you produce that?

A. I could not swear as to the number on the deck; might possibly have been some on the after deck, but I distinctly recollect of five or six, because I had an



argument with the surveyor at the time about taking them off.

Q. What surveyor was that?

A. With Capt. Gibbs and Capt. Fowler.

Q. Did they survey the cargo before the steamer left? A. No, this was after the accident.

Q. After the accident? A. Yes, sir.

Q. Was this cargo surveyed prior to the time of the accident? A. No.

Q. Not examined by any marine surveyor?

A. No, sir.

Q. Passed upon by any marine surveyor?

A. Not to my knowledge.

Q. The entire loading was left to you, was it?

A. Myself and the captain.

Q. Were those large timbers loaded down on the deck? A. Yes, right on the deck.

Q. Were they loaded next to the stanchions?

A. No, next to the hatches.

Q. Next to the hatches in towards the—

A. Yes, sir.

Q. What size timbers were laid next to the stanchions?

A. Why, all sizes, miscellaneous lumber, and some of it as small as one inch.

Q. What was the approximate size of most of the lumber loaded next to the stanchions on the forward deck? A. Why, I could not tell; no one could tell.

Q. Mr. Leach, are those stanchions when they are first put in position placed in an upright position, when first placed on the deck? A. No.

Q. They are put inboard when first— A. Always.

Q. How do you get them inboard when you first put them on deck?

A. Why, with your blocking at the bottom. It all depends on the amount of blocking you put behind them.

Q. When the blocking on the deck would be of such length that the cargo would be—that the bottom of the stanchion would be further outboard than the position of the stanchion at the rail? A. Yes, sir.

Q. How much inboard would they be? You had charge of that, didn't you?

A. Oh, yes, but I never measured it. Oh, I should say six inches or more inboard.

Q. You had charge of that, didn't you?

A. Yes, sir.

Q. Those blocks were placed under your direction?

A. Oh, I didn't look after that that close; I have a stevedore foreman who is very good at putting up stanchions; thoroughly understands what I want, and I do not interfere with him.

Q. He had charge of it, really?

A. He had charge of it, yes.

Q. Who is the stevedore? A. Waadne.

Q. As the cargo was loaded on the forward deck, there is a tendency to press those stanchions out?

A. No.

Q. The effect of loading the cargo on the forward deck doesn't have any effect whatever on the stanchions?

A. Not any.

Q. It is loaded just up to and level with the line of the stanchions? A. Yes, sir.

Q. And the cargo is brought—

A. Each tier is set in a little as it comes up.

Q. You are sure that was done on the Strathalbyn?

A. Yes, sir.

Q. After the cargo is all loaded, it is lashed, is it not? A. Yes, sir.

Q. How high was this cargo on the forward deck?

A. About fourteen feet.

Q. Is that as close as you could get to it?

A. Yes, without looking it up; I have a record of it.

Q. I would like for you to produce that record too, Mr. Leach.

A. I haven't it with me, of course. (Witness looks through papers.) Fourteen feet.

MR. HAYDEN: Q. Your record shows fourteen feet? A. Yes, sir.

MR. HAYDEN: There is another record—records of the timber on the forward deck?

A. I cannot get that out of here.

MR. BOGLE: Q. What is this record you read from, Mr. Leach? Is that a copy of your bill of lading?

A. No, that is a report on all steamers, that we keep on our steamers; report of daily transactions.

Q. That is not the original report; where is the original report?

A. I suppose that is destroyed; that is the report that is made up from my report, as I make it up from lead-pencil, and the girl makes several copies for the 'Frisco office and etc., and they are filed away.

MR. BOGLE: I would like to have this identified.

(Paper marked "Claimant's Identification, Leach No. 1.")

Q. Referring to Claimant's Identification, Leach 1, state if that record shows the total amount of cargo loaded on deck? A. Yes, sir.

Q. What is that amount? A. 960,095.

Q. Have you any way, Mr. Leach, of telling what proportion of that was loaded on the forward deck?

A. Why, no, except from measurements or from some loading plan that might be in our office; it would be approximate amounts, only.

Q. If you have such a loading plan, I would like for you to produce it now, if you have it; if not, give it to Mr. Hayden later and have him—

A. I haven't it with me.

Q. Referring to this same Identification on the third page, I notice an item here "On after deck." Does that mean 230,000 was loaded on the after deck?

A. Oh, no. That refers to No. 4 hatch,—No. 4 gang. One gang worked on the steamer that day. That is a report of daily transactions here, and one gang worked on the after deck putting on 42,000 on the after deck; that is what that refers to, just that day's work, that is all that is.

Q. The items here, where it says "On deck," means cargo which was really loaded on deck?

A. Yes, it is approximate amounts, which may not include all of it. That was put in, not to show that lumber was loaded on deck, but to show that gang worked on deck.

Q. So that does not show the lumber and the sizes and etc., that were loaded on deck at all?

A. Oh, no; there are no sizes given on it at all.

Q. Could you tell me, Mr. Leach, the approximate proportion of that entire deck—the cargo which was loaded there after taking what proportion was loaded on the forward deck?

A. Oh, I should say there was approximately half a million feet loaded on the forward deck, a little less rather than a little more than that.

Q. There would be more loaded on the forward deck than on the after deck, then?

A. No, about the same, I should think. My recollection of her is that the after deck is longer than the forward deck, and in consequence the distance of it, the height would be more than made up in length.

Q. To the best of your recollection, would it be divided about half and half. A. I think it would.

Q. Now, Mr. Leach, as these stanchions were originally placed, before any cargo was put on the forward deck, how far would the top of the stanchions be inboard of the bottom?

A. They were not placed before the cargo was put on deck. There was cargo put on deck before the stanchions were placed.

Q. How much cargo?

A. Oh, perhaps a foot of cargo.

Q. The cleats at the bottom of those stanchions were placed before any cargo was put on deck?

A. No, it is all done after storing the cargo.

Q. It was done before any cargo was placed against the stanchions?

A. The cargo is—the stanchion is put in afterwards; same on the inside.

Q. You had all the cargo on the deck? A. Yes, sir.

Q. You placed your cleat, then put up the stanchion?

A. No, you stand the stanchion up and place the blocking afterward; get the stanchion lined just the way you want it and then place the blocking and wedge in both sides until secured at the bottom.

Q. Then place the cargo and wedge against it?

A. Yes, sir.

Q. No, when that cargo is first put in position the way you want it—how much cargo did you have on deck?

A. Twenty-five or thirty thousand, likely; I cannot recollect on that steamer just how much we did have.

Q. How high?

A. Probably a foot high, I would not state positively; sometimes it varies.

Q. A foot high? A. Approximately that.

Q. Now, in that position when the stanchion is properly placed, as you have testified, how far would the top of the stanchion be inboard the bottom of the stanchion? A. A foot and a half or two feet.

Q. After the stanchion is properly placed, you proceed to load your cargo up, bringing it in slightly?

A. Yes, sir.

Q. So as to follow the line of the stanchion?

A. Yes, sir.

Q. And after the entire deck cargo is aboard and before it is lashed, would the stanchion be in the same position as it was when first placed? A. Yes, sir.

Q. Then what steps are taken to lash the cargo? How is that done? A. Why, the lashing—

MR. HAYDEN: I just want to put this objection in. I do not object only on the ground that Mr. Leach stated he was not on this ship when the cargo was lashed, and I therefore think he cannot testify exactly how this cargo was lashed. If you want his general testimony as to how they generally lash cargo, from his experience, that is one thing; as applied to this particular ship, that is another thing.

MR. BOGLE: Q. Were you aboard when the cargo was lashed? A. No, sir.

Q. Who had charge of it? A. The mate of the ship.

Q. Were you aboard after the cargo was lashed?

A. I was aboard, I cannot say when; I was aboard sometime during the day of the 12th.

Q. Did you take notice the way the cargo was lashed. A. Oh, yes.

Q. How was it lashed?

A. In the usual manner. I could not tell you exactly how it was lashed, no; I could not tell you how many loops they had, or anything of that kind.

Q. Do they put ropes or chains around the cargo to draw it inboard? A. Wire or chains.



Q. How much does that draw the cargo inboard?

A. Why, practically none; I do not think it would draw it in any.

Q. Was any effort made on this ship, do you know, to draw the top of the stanchions inboard after the cargo was all loaded?

A. No effort made to draw them in, the only effort was made to tighten them up, that is all.

Q. What do you mean by tightening them up?

A. They might put a guy over the stanchion to straighten them up, draw them in. It is customary not to draw them in but to secure them where they are.

Q. That is for the purpose merely to secure them?

A. Merely to secure them, not to draw them in at all.

Q. Do you know whether that was done on this ship?

A. I could not state whether it was done or not; I should know but I do not.

Q. Did you notice particularly the morning of the 12th when you were aboard, the position of those stanchions, whether they were inboard or outboard or up-right?

A. No, not at that time; I had no reason for looking; I had seen what there was before previously.

Q. What do you mean by that?

A. I knew they were lined up right; I always looked to see; it is very essential they should be in line.

Q. When did you look to see that they were lined up right? A. When put up.

Q. That is when the loading first started?

A. Yes, sir.

Q. You particularly noticed that?

A. Yes, sir, always noticed.

Q. You would testify they were inboard a foot or a foot and a half when first put up? A. Yes, sir.

Q. You would testify after all the cargo was put aboard, and before it was lashed, the stanchions were in exactly the same position as when put up?

A. Except one or two that they slipped in afterwards, the last ones opposite the hatchway, where they have to leave them out.

Q. The others were all in the same position they were, a foot and a half or two feet inboard? A. Yes, sir.

Q. How far would they be inboard of the main rail around the main deck?

A. The top of the rail is about six inches. Do you mean outside of the rail or inside of the rail? Top of the bulwarks about six inches inside; that would be about the same thing; be a foot and a half, anyway.

Q. You think the top of the stanchion was a foot and a half inboard from the inside of the rail of the ship? A. Yes, sir.

Q. Did you notice particularly whether it was or not? A. No, that is just a matter of judgment on that.

Q. Did you make any particular examination after the cargo was all loaded and lashed to see whether that was true or not? A. Oh, no.

Q. That is merely—what you are testifying to is from recollection?

A. From my knowledge of the way they are put up; I am putting them up constantly.

Q. This particular steamer; you are testifying from your knowledge of how they loaded this particular steamer? A. Yes, from this particular steamer.

Q. Or from your general knowledge? I thought you paid no particular attention to it, Mr. Leach?

A. I did not measure them to see; I know they were in at least that much.

Q. Did you examine them to see?

A. After the cargo was loaded?

Q. Yes. A. Why, certainly not.

Q. When did you make this examination of the line of those stanchions, after the collision, by standing on the forecandle? A. The next morning.

Q. About what time? A. Ten o'clock.

Q. Had any of the forward deck cargo been unloaded at that time? A. No, sir.

Q. Was the cargo lashed just as it was when it left the port of Tacoma, prior to the collision?

A. I think so, I could not state positively; they might have removed some of that, I did not.

Q. Had they started to unload any cargo?

A. No, sir.

Q. Had they started to remove the lashing?

A. They had not started to remove any cargo nor the lashes.

Q. Were any longshoremen aboard at that time?

A. No, sir.

Q. Who was with you when you made this examination?

A. I don't think there was any one with me at the time.

Q. Which side did you sight along the stanchions?

A. On the port side.

Q. Did you make a similar examination along the starboard side? A. No, we could not.

Q. Where were you standing when you made this examination?

A. About ten feet forward of the break of the fore-castle.

Q. How did you make it?

A. By going to the rail and sighting along to the side light.

Q. Did you lean over the rail in order to do that?

A. I leaned over sufficiently to get in line of the ship, yes.

Q. You mean so that you were sighting along the rail?

A. So that I was sighting directly over the lights.

Q. In your position you were virtually forward of that light? A. Yes, sir.

Q. Was that what you were trying to do?

A. Yes, sir.

Q. From that position were the stanchions directly ahead of you, or were some of them inside of you?

A. They were inside of me.

Q. All of the stanchions? A. Yes, sir.

Q. Inside of your line of vision?

A. Yes, sir, the tops of them.

Q. What could you see on the outside of the port light? A. Outside of the port light? In what way?

Q. By sighting along outside of those stanchions, what could you see, what part of the light box?

A. I could not see the whole box.

Q. Was the light in the box at that time? A. No.

Q. You could see the entire box, could you?

A. I could see the entire box except the portion ahead of the blocks in the forward end.

Q. Could you see the after end of the light box?

A. The back of the box, you mean?

Q. Yes. A. Part of it, not the entire part.

Q. Could you see the block at the forward end of the box? A. Yes, sir.

Q. Was that right straight up to where it was fastened on the box? A. Yes, sir.

Q. You could not see the entire after block?

A. No, the forward block shows for part of the after end from that point.

Q. What could you see by sighting inside of the line of the stanchions?

A. You could see a portion of the box.

Q. What portion of the back?

A. I could see the block of the forward end and a little of the after end.

Q. How much of the after end could you see?

A. Oh, not a great deal of it.

Q. What part of the after end?

A. The outside portion.

Q. Where were you standing when you made that observation, Mr. Leach?

A. Why, on the forward deck, forward of the mast part, well forward on the deck and midship of the deck, I should say, on the inside.

Q. About midship?

A. Not midships of the ship, midships of one side, perhaps eight or ten feet of the rail, something like that.

Q. Eight or ten feet inside of the rail, and how far forward of the forward— A. pretty well forward.

Q. Is that as far as the break of the forecastle?

A. No, no.

Q. How far were you from that?

A. I could not say, perhaps a few feet back of that.

Q. Five feet?

A. Yes, I should say ten or fifteen feet, possibly.

Q. Ten or fifteen feet back of the break of the forecastle? A. As near as I can recollect.

Q. About ten feet inside of the rail?

A. I would say approximately that, eight or ten feet inside of the rail.

Q. On top of the cargo on the port side?

A. Yes, sir.

Q. How far did you say you were inside of the line of the stanchions at that time?

A. Well, I would be eight or ten feet—eight or nine feet inside of the stanchions at the time.

Q. Were you looking over the stanchions?

A. No, sir.

Q. Were you looking inside the line of the stanchions? A. Yes, sir.

Q. You could not see the entire after block?

A. No, sir.

Q. Could you see the entire forward block—that is, forward block—forward end of the lights?

A. Oh, approximately all of it, yes, sir.

Q. Did you make any other observation to determine whether the line of stanchions on the port side obscured the light? A. No, sir.

Q. The weight of the cargo at that time was on the starboard stanchions, wasn't it? She had a heavy starboard list? A. She had a heavy starboard list.

Q. Would that throw the weight of the cargo to the starboard stanchions? A. No, sir.

Q. How much of a list did she have?

A. Oh, in the neighborhood, I should say, of eleven or twelve degrees now. I have forgotten just what it was; it was considerable of a list.

Q. Wouldn't the tendency of that list be to throw the weight of the cargo from the port stanchions towards the starboard stanchions?

A. The tendency would be that way, yes.

Q. But you think as an actual fact that the weight was not over towards the starboard stanchions?

A. No, sir.

Q. This cargo was lashed to the port stanchions, was it.

A. The cargo was not lashed to the stanchions at all.

Q. It was not lashed to the stanchions at all?

Q. It was not lashed to the stanchions? A. No, sir.



Q. Were there any lashings across the top of the stanchions?

A. That I could not recollect, I think there was, I am not sure.

Q. If that is true, then the weight thrown over on to the starboard stanchions would draw the port stanchions towards the starboard, wouldn't they? A. No.

Q. You do not think that would be true? A. No.

Q. Had the deck cargo shifted any? A. No.

Q. Not at all? A. No, sir.

Q. Did you go back on the navigating deck and look forward to see whether— A. No, sir.

Q. You did not make any observation from that point? A. No, sir.

Q. How did you happen to be making this observation the morning after the collision to determine whether or not the stanchions obscured the light?

A. I had heard one of the surveyors say something, and I wondered if it was possible, and to satisfy myself I made this observation.

Q. After you had made the observation, did you say anything to this surveyor? A. No, sir.

Q. Who was this surveyor?

A. I am not sure who it was; there were a number aboard. There was Clift and Gibbs and Fowler all aboard. I heard them discussing it, and made the observation on that account.

Q. Did they also make observations?

A. I don't know.

Q. How did the discussion happen to arise, if they had made no observations?

A. Why, it was just mentioned.

Q. As being a possibility?

A. There was something said at that time about it, I do not recollect just what; something was said about it that drew my attention to it.

Q. You made your observation to satisfy yourself, did you, that the light was not obscured? A. Yes, sir.

Q. You did not say anything to the surveyor about that? A. No, sir.

Q. Or ask them to make an observation?

A. No, sir.

Q. What was the height of those stanchions above the deck? A. Oh, they are various heights.

Q. What was the height of the highest one?

A. Twenty feet.

Q. I mean above the deck load?

A. Above the deck load, it would be six feet above the deck load.

Q. As you stand on the forecastle deck, were those stanchions higher than or below the line of vision?

A. They were higher.

Q. They were higher than you were? A. Yes, sir.

Q. Was the forecastle deck higher than the deck cargo?

A. No, the deck cargo was higher than the forecastle.

Q. How much higher?

A. About five and a half or six feet. The forecastle is eight and a half or nine feet high I should say above the main deck.

Q. Did you notice the cargo, the way it was loaded on the after deck of the Strathalbyn? A. Yes, sir.

Q. Was it loaded in the same manner it was loaded on the forward deck? A. Yes, sir.

Q. The stanchions placed in the same way.

A. Yes, sir.

MR. BOGLE: I would like at this time to demand the loading plans of the steamer Strathalbyn.

MR. HAYDEN: If we have them we will be glad to produce them.

MR. BOGLE: Q. Mr. Leach, how long was it after the arrival of the steamship Virginian in the port of Tacoma after the collision before you left in this launch to go out to the Strathalbyn?

A. Oh, fifteen minutes to a half an hour, something like that, it was only a short time. I was on the dock when the Virginian came in, and my recollection is we went right over to the launch house and took the launch.

Q. Where were you sitting on the launch as you left the port of Tacoma?

A. I was standing on the forward deck of the launch.

Q. You were standing out with Mr. Macquarrie?

A. Yes, sir.

Q. As you rounded Brown's Point, how far were you off the Point?

A. Oh, I could not say, I don't recollect.

Q. Were you an eighth of a mile or a quarter?

A. I would not say whether I was—I know I was not a mile, but that is about all I can say; I could not say an eighth of a mile or a half a mile.

Q. And after rounding Brown's Point ahead for Robinson, you followed the coast line?

A. We followed the coast line fairly close.

Q. You were looking for the Strathalbyn all the time? A. Yes, sir.

Q. How far were you from Brown's Point and how close to Dash Point at the time you picked up the Strathalbyn red light?

A. We were fairly close to Dash Point, I should say.

Q. Do you know what direction you were headed at that time?

A. No, I don't. I was not steering. We were following the shore and we were making pretty close to Dash Point, just around Dash Point.

Q. Was your course from Brown's to Dash so that you were following the coast and passing just off Dash Point? A. Just off of Dash Point.

Q. Where was this red light when you saw it?

A. Why, it was off to our port bow.

Q. About how far, how many degrees?

A. Oh, I could not say.

Q. Was it well off or ahead of you?

A. It was not ahead of us, it was pretty well off towards one side.

Q. Was it over towards Robinson's Point?

A. Yes, sir.

Q. Was it in line between you and Robinson Point light?

A. I don't recollect having seen Robinson Point light that night at all, so I could not tell you.

Q. Do you know how far it was from Robinson's Point? A. No, I could not say that neither.

Q. What light is there on Robinson Point?

A. There is a red flash light, I think.

Q. Did you notice this red flash light at all on that night? A. I did not.

Q. How long after you followed up the red light was it before you picked up the masthead light?

A. Just a minute or two.

Q. This launch is down pretty close to the water, isn't it? A. Yes, sir.

Q. You picked up these lights by looking up?

A. Well, she was so far away you could not hardly say it was looking up; it was looking up, of course.

Q. Was it apparently stationary, or could you see it move?

A. Stationary—you could see it was moving ahead after things got lined on it and watch it, then you could see it moving.

Q. You could see it moving against the back line of the shore?

A. The shore was indistinct, but you could see it moving from our approximate position; that is the way we knew it was a steamer light.

Q. You changed your course and headed for this light? A. Yes, sir.

Q. Where was the Strathalbyn when you arrived along side; how far from Robinson?

A. Why, she was, I should say she was a mile off of Dash Point.

Q. A mile off of Dash?

A. Yes, something like that—approximate distance.

Q. How far do you estimate she was away when you first saw her?

A. Oh, she must have been two or two and a half miles anyway.

Q. How long did it take you to arrive along side? How long did it take to run the launch to her after you first picked her up. A. I don't know; I didn't time it.

Q. What is your best recollection?

A. Perhaps fifteen or twenty minutes.

Q. Do you know the speed of this launch?

A. No, I don't.

Q. Did you notice Robinson's Point at all on this night? A. No, sir.

Q. How was the red light when you first saw it, was it a bright light or a dim light?

A. Why, it is a bright light.

Q. Is it as bright as an electric light?

A. No, it is not as bright as an electric light.

Q. Could you tell from that distance that it was an oil light? A. No, I could not tell what it was.

Q. Was the masthead light about the same?

A. Well, the masthead light was a brighter light; it is a white light and therefore brighter.

Q. How do you explain the fact that you picked up the red light before you picked up the masthead light?

A. Why, we may have seen the masthead light, but didn't realize what it was; it is a white light and you could not tell; but we did not see it to know what it was until after we seen the red light.

Q. Could you tell there was a steamer there if you saw the masthead light?

A. No, not necessarily; there might be a light on shore, you could not tell.

Q. Was it about the same kind of a light you might see ashore? A. Yes, sir.

Q. Approaching this time you only saw two lights, masthead and red light? A. Yes, sir.

Q. When did you first see the starboard light after that, the green light?

A. After we rounded the ship, when we went around on the starboard side of her.

Q. As you were approaching the Strathalbyn this first time, were you approaching in such a position that you could have seen the green light if it had been burning? A. We could not have seen it, no.

Q. Why was that?

A. From the position in which we were; we were approaching from the port side.

Q. It would not have been possible?

A. No, it would not.

Q. When approaching the Strathalbyn the second time, about where did you pick her up?

A. After coming from the St. Paul.



Q. The second time you approached her?

A. That was coming from the St. Paul dock. We picked her up, oh, perhaps a quarter to a half a mile this side of Brown's Point.

Q. That is coming into the harbor of Tacoma?

A. Yes, sir.

MR. HAYDEN: What do you mean by "picking her up"?

MR. BOGLE: That is exactly what I mean, when you first noticed her.

A. When I first noticed her, she was just rounding Brown's Point.

Q. Had she started to swing into the harbor at that time, when you first saw her?

A. I suppose so, I don't know.

MR. HAYDEN: What do you mean by "picking her up," when you went aboard of her when you got out to her? A. When we got out to her.

MR. BOGLE: Q. When did you first see her?

A. The second time?

Q. Yes.

A. Just as she was rounding Brown's Point.

Q. What did you see then?

A. I saw the white light, and a few minutes after the red light.

Q. When did you see the green light?

A. Not until after we had started off towards her.

Q. How far was she away then?

A. Oh, half a mile or a mile.

Q. Do you know how far she was off Brown's Point? A. When we first saw her?

Q. Yes.

A. Something under a quarter of a mile when we first saw all three of the lights.

Q. When you first saw all three? Where was she when you first saw all three?

A. Something like a quarter of a mile off Brown's Point.

Q. Had she made the turn around Brown's Point?

A. Yes, sir.

Q. Was headed into the harbor? A. Yes, sir.

Q. You were headed out? A. Yes, sir.

Q. Was Mr. Macquarrie still on deck? You had left him at the ship? A. He was on board the steamer.

Q. Was anybody else out on deck?

A. No, I think both launch men were inside, one steering and the other tending to the launch; the other one had been left on the St. Paul dock.

Q. You think she was half a mile to a mile away when you first saw all three of the lights? A. Yes, sir.

Q. You saw them all at the same time. A. Yes, sir.

Q. You are positive of that, are you? A. Yes, sir.

Q. What did you do after you saw all three of those lights? A. Went along side the steamer.

Q. What side did you go? Did you change your course in order to swing around and come along side of her?

A. No, I didn't go up to board her; I went along on the starboard side of her and they hollered out to me and told me they had decided not to put her in the St. Paul.

Q. You changed your course a little and went around on the starboard side?

A. Came along on the starboard side.

Q. You changed your course?

A. No, we did not change our course,—no changing of the course, we was headed right for her.

Q. You must have changed your course?

A. We were so far away you would not hit her exactly.

Q. You were directly ahead of her at that time?

A. Yes, sir.

Q. And approached on a course directly opposite to hers? A. Yes, sir.

Q. You particularly noticed that?

A. Yes, sir, we were steering for her.

Q. What list do you think she had at that time, Mr. Leach?

A. Oh, you could not tell; the only way you could tell—you could not see her, it was dark, the only way you could tell would be the relative position of the red and green light; that is the only way you could tell what kind of a list she had.

Q. What was the relative position of the red and green light?

A. The headlight was considerably higher than the green light.

Q. Did you have any trouble in making out the green light at all. A. Oh, no.

Q. You could see that perfectly plain, too?

A. Yes, sir.

Q. Did you pass any other steamer when you were approaching,—any other steamer or tug passing you when you were approaching the Strathalbyn off of Brown's Point? A. Not that I recollect of.

Q. Did you see any other steamer or tug in that vicinity at all.

A. I think there was a tow boat out there somewhere.

Q. Where was this tow boat?

A. Why, somewhere near the Strathalbyn; my recollection is there was one.

Q. Do you remember with reference to the launch, where she was? She was ahead of you?

A. Yes, she was ahead of us.

Q. You did not see these lights until after she had rounded Brown's Point and had changed her course so that she was headed in towards the harbor, did you?

A. Did not see all of them, no.

Q. After you first picked them up did you watch them up until the time you approached close to her?

A. Why, watched them only enough to see where we were going, that is all.

Q. I mean did you watch all three lights from that time up to the time you got along side of her?

A. Why, watched them for what reason?

Q. I don't know why you were watching them; I asked whether you did or not.

A. Watched them enough to steer out to the ship.

Q. You, of course, were not steering the ship, so you had not reason to watch them for that purpose?

A. I was telling the launchman where to put me and what to do.

Q. Then you went back to the buoy, did you, in Tacoma harbor? A. Yes, sir.

Q. Did they drop you on the buoy? A. Yes, sir.

Q. You stayed on the buoy while the vessel was approaching you? A. Yes, sir.

Q. You again saw all three lights? A. Yes, sir.

Q. How far away was she when you saw all three lights the second time?

A. Oh, eighth of a mile possibly, you could not say though; I cannot recollect just what time I did see all three of them. As she rounded up and got squared up for the buoy, I was off.

Q. So she came right straight down on to the buoy, did she? A. Yes, sir.

Q. Do you know how the tide was running that night, Mr. Leach?

A. No, I could not tell you whether it was flooding or ebbing.

Q. She did not make any maneuver or circle in order to get up to the buoy, but came straight down on it?

A. When she came in she came in over towards East Tacoma, that is the direction she came in from.

Q. What direction from the buoy?

A. I don't know what direction it is, unless I took a chart and looked at it; pretty near north, I should say.

Q. She came right down, straight down on to the buoy, did she?

A. Yes, with her bow a little off to the right of the buoy, looking at her.

Q. How far off to the right of the buoy?

A. Not very much, about twenty feet.

Q. You could see all her lights up to what time?

A. Till she got fairly close to the buoy.

Q. How close? A. A couple of hundred fathoms.

Q. Then which lights shut out? A. The red light.

Q. She came along on her starboard side of the buoy, did she? A. Yes, sir.

Q. You got in the boat,—you had a boat there?

A. We had a launch. I had sent the launch to the ship when she got reasonably close to the buoy to get their line.

Q. They brought the line back to you and you fastened it to the buoy? A. Yes, sir.

Q. Do you remember which way she was swinging after she got a line to the buoy? A. I do not.

Q. You took notice of the fact did you, Mr. Leach, that both of these times as she came from Brown's Point, and as she was approaching the buoy, the fact that you could see all three of her lights? A. Yes, sir.

Q. Was that anything unusual to be able to do that?

A. No, it—you can always see it on a steamer.

Q. Why should that fact particularly impress itself on your memory?

A. From the fact she had been in a collision.

Q. You were particular to see whether the lights were out? A. Yes, sir.

Q. You had already seen her lights as you approached off Dash Point?

A. I had not seen them all at once.

Q. You had not seen them all at once?

A. Not off Dash Point.

Q. That is what you were trying to do, see them all at once? A. Yes, sir.

Q. Why did that matter particularly impress you that you wanted to see all her lights at once?

A. From the fact she had been in a collision.

Q. Was that any reason why you should want to see all her lights at once? A. Naturally.

Q. Any question arise about her lights?

A. No question arose, but that is what any one interested in the line of business I am doing would look to see. Any sailor or any one else that has anything to do with shipping would look after a collision to see whether her lights were right.

Q. What do you mean by "whether her lights were right"?

A. Whether you could see them all—whether they were in right position.

Q. You mean whether you could see them all at once?

A. Yes, if you were in the right position to see all at once, whether you could or not.

Q. You were trying to see if you could see all the lights at once to determine whether or not the stanchions obstructed any of them?



A. No, stanchions had not entered my head at that time.

Q. Did you see anything else to obstruct the lights?

A. Nothing, unless they had not been burning.

Q. You had seen her lights off of Dash Point?

A. Yes, sir.

Q. You knew they were all three burning?

A. I knew after I had rounded the steamer that all three were burning.

Q. Did you look as you left her the first time,—the time you left Mr. Macquarrie aboard as you pulled away from her, to see whether all lights were burning?

A. No, sir, I do not recollect looking at that time.

Q. You did that particularly on approaching her the second time? A. Yes, sir.

Q. Was that to see whether the lights were burning or whether they were obstructed?

A. To see whether they were burning.

Q. You knew they had been burning a few minutes before when you had seen her, didn't you?

A. I was interested in knowing whether they were burning then or not.

Q. That was merely to see whether they had continued to burn? A. Yes, sir.

Q. Had any question been raised as to whether her lights were in danger of going out?

A. No, I had talked to no one; had seen no one aboard the ship.

Q. You had seen her once and saw that all her lights were burning, and the second time you noticed particularly to see whether they were all burning at once? A. Yes, sir.

Q. Is that what you did? A. Yes, sir.

Q. That was for the purpose of seeing whether they were obstructed or not, wasn't it?

A. To see whether they were all right or not.

Q. To see whether they were obscured?

A. To see whether they were obscured and to see whether they were burning, but to see whether her lights were all right.

Q. Then, there had been some question in your mind as to whether the lights were obscured? A. No.

Q. Had it occurred to you that her cargo was loaded so that the stanchions might obscure the lights?

A. No, sir.

Q. That had not occurred to you? A. No, sir.

Q. So you were not looking to see whether they were obscured? A. No, sir.

Q. Merely to see whether they were burning?

A. To see whether they were all right or not.

Q. If there was no question of their being obscured, it would make no difference whether you could see all at the same time or not, would it? A. Oh, no.

Q. Did you tell the launch man to approach her in a position directly head on so that you could ascertain whether they were burning or not?

A. No, we were headed direct for her; she was headed in a position we occupied, and as a consequence came bow on to her.

Q. Mr. Leach, this cargo on this Strathalbyn as loaded prior to the collision had never been surveyed by a marine surveyor? A. Not to my knowledge.

Q. Isn't it customary to survey a cargo, especially for insurance purposes, where a vessel is taking cargo?

A. No, not necessarily.

Q. I say, isn't it a custom of the underwriters to have their surveyors survey a deck cargo of lumber and pass upon it before the vessel leaves port?

MR. HAYDEN: I object to it as immaterial.

A. No, I don't think it is; it is not on our vessels.

Q. Have you a regular surveyor here who surveys your cargoes? A. No, sir.

Q. Did you have this cargo surveyed when she left the second time, after the collision?

A. I don't know, I was not on her the second time, had nothing to do with her the second time.

Q. Mr. Leach, do you know whether Capt. Clift surveyed that cargo before she left the second time?

A. I do not.

Q. After reports had been made? A. I do not.

Q. You never heard?

A. I may have heard, but if I have I have forgotten.

Q. You have no recollection of that at all?

A. No, sir, I had nothing to do whatever with her

and I think I was out of town when she left the second time.

Q. You think with a high deck load of cargo, fourteen feet on the forward deck, it is not customary to have a regular surveyor survey that cargo for insurance purposes?

A. No, there are lots of vessels going out without surveys.

Q. It is not customary?

A. It might be customary with some firms, and some firms not.

Q. It is not with your firm?

A. It is not with our firm.

Q. Did Capt. Clift ever survey any of your cargoes prior to his death?

A. Well, he surveyed cargoes, yes, a good many of them.

Q. On the steamers?

A. Yes, I think he did on some steamers.

Q. What steamers have you had leaving here with deck cargoes subsequent to this collision?

MR. HAYDEN: I object to that as immaterial.

A. Any number of them.

Q. Can you tell me any one of the steamers that has gone out with a deck cargo fourteen feet which has not been surveyed, subsequent to this collision?

A. Why, fourteen feet or more, yes.

Q. What steamers have you had go out with that deck cargo—

MR. HAYDEN: All of this is subject to my objection.

MR. BOGLE: (Continuing) which have not been surveyed by a marine surveyor?

A. I do not know, pretty hard to tell which ones had fourteen foot deck loads or more; there have been some of them go out, though, I know.

Q. Have any of your vessels with deck cargoes gone out without being surveyed? A. Yes, sir.

Q. Could you tell me of any one vessel?

A. I cannot recollect any particular one, no.

Q. Could you tell me any one which has been surveyed? A. No, I could not do that, either.

Q. Has Capt. Gibbs surveyed any of your cargoes since the date of this collision? A. One or two.

Q. Had he surveyed any of your cargoes prior to this collision?

A. No, I think not. Clift—well, yes, he had up in other districts, not in Tacoma; that is, Capt. Gibbs or Capt. Genereaux, I don't remember which one surveyed them.

Q. Did you have any other surveyors besides Capt. Gibbs or Capt. Genereaux survey any of your cargoes?

A. Capt. Clift—not any of the cargoes that I have worked on.

Q. Did Capt. Clift survey any of your cargoes subsequent to this collision? A. Sailing cargoes, yes.

Q. Subsequent to this collision?

A. Yes, sir; sailing vessels.

Q. Are you sure of that, Mr. Leach?

A. Yes, sir, I think so—yes, I know so.

Q. What cargoes did he survey?

A. Well, he surveyed the "Commerce"—Schooner "Commerce".

Q. When did she leave here?

A. Oh, I could not say just what time.

Q. You know that Capt. Clift is dead?

A. Yes, sir.

Q. You knew the condition he was in at the time of this collision? A. Yes, sir.

Q. Do you know whether or not Capt. Clift was asked by your firm to survey this cargo and pass upon it before the collision? A. I do not know.

Q. And whether or not he refused to pass upon it? Do you know anything about that?

A. I do not know anything about it; I would not know.

MR. HAYDEN: If you want to know about that, Mr. Bogle, as a matter of fact I will tell you what I know about it.

MR. BOGLE: If you can get the testimony of your people, I would be very glad to have it. I have been told something about it.

Q. You could not give me the name of any vessel which left here taking a cargo fourteen feet or more

which was surveyed subsequent to the time of this collision? A. No, sir.

Q. Who would be able to give us this information?

A. Why, Mr. Macquarrie could, I expect. I know that lots of them have had more than fourteen feet, but just which ones I do not recollect. Practically all of our steamers have gone out without a surveyor.

Q. Both prior and subsequent to this collision?

A. Yes, sir.

MR. BOGLE: I do not know whether it would be a proper demand or not, but if you are willing to comply with it, I would like to get that information.

RE DIRECT EXAMINATION BY MR. HAYDEN.

Q. In view of Mr. Bogle's cross examination as to whether or not the light screen might be visible from the deck of the Strathalbyn, I hand you a photograph and ask you—I hand you a photograph, Libellant's Identification Leach-1, and ask you if that photograph shows the light screen over deck? A. It does.

Q. Was that about as it appeared to you?

A. No, I saw more of it than that; I saw more of the wing of the ship and could see more of the lights.

MR. BOGLE: Where?

A. The side of the ship, the wing—steered out further towards the side of the ship.

MR. HAYDEN: But in that photograph you can see the light screen, can't you? A. Yes, sir.

Q. Well, I will ask you to look at Leach's Identification "B", and ask you if it appeared anything like that?

A. No, that is obscured more than it was when I saw it. I was—I think I was further around and could not see as much as I can here (indicating on photograph).

MR. BOGLE: I object to these photographs being introduced. It is not shown when they were taken or whether it is the Strathalbyn.

MR. HAYDEN: I am simply referring to them, that is all.

Q. You think you could see a little more of it?

A. Why, I could, and I could not; that is, if the stanchions were out I could see more of it—if that stan-



chion was out I could see more from where this photograph was taken than from where I stood.

Q. Neither of these photographs were in the same position you had reference to?

A. No, I stood between the line from which those photographs were taken.

Q. I see on this Claimant's Identification Leach No. 1—I notice you have a record here of the draft of the ship,—draft of the Strathalbyn. Was that record made at the time, after she was loaded? A. Yes, sir.

Q. What draft was she drawing aft after she was loaded? A. Twenty-five feet.

Q. What draft was she drawing forward after she was loaded? A. Twenty-two feet, six.

Q. Her mean draft was what?

A. Twenty-three, nine-tenths.

Q. Do you know whether or not that was after she had her bunkers in?

A. That was after she had her bunkers.

Q. When she was already to go to sea?

A. Yes, when she was shifted from the North End.

Q. To go to the buoy?

A. Yes, sir, that might vary her actual draft, by actual measurements; might vary from that draft anywhere from half an inch to an inch. That is as near as you can get by choppy sea, just by looking at it.

MR. HAYDEN: Do you want to introduce this?

MR. BOGLE: Yes.

MR. HAYDEN: I do not know the purpose of it. I guess you have everything you want out of it.

MR. BOGLE: I will offer it in evidence. If you afterwards have any objection, you may withdraw it.

MR. HAYDEN: Well, I object to a great deal of the data which is on here, on the ground that it is immaterial. I don't know what bearing it possibly could have on this part of the collision. If there is any particular portion of it that you think has a bearing on the collision, and you will indicate it, I will be able to cross examine in connection with it. It is a mass of figures and a mass of data; I do not know whether it is hearsay or what it is as far as it has gone in connection with it.

THE WITNESS: Some of the figures are approxi-

mate, and some of them are only—are taken from actual records, where you can get the actual figures.

MR. BOGLE: Q. Who made this record?

A. Why, I have forgotten now whether I made it or—I think I made it up, that is, I drew up a rough copy of it,—I am not sure.

Q. Does that give the total number of feet which were aboard the Strathalbyn upon which freight was charged? A. I think so.

Q. Is that as accurate an account as there is in existence as to the lumber which went aboard the Strathalbyn and the weight of same?

A. Well, the weight is only approximate.

Q. Is that the nearest approximation that you can get at this time?

A. Yes, it would be as near as I can get.

Q. Is there any other record which shows it more definitely, if so, I would prefer to have that; but if this is the best information you have, I want it?

A. This is all we would have. The weights are only approximate; there is no way for the cargo to be weighed.

Q. What lumber was on deck, Mr. Leach,—what kind of lumber? A. Oregon pine.

Q. It was all Oregon pine that was loaded on deck?

A. Yes, sir.

MR. BOGLE: I offer that in evidence.

MR. HAYDEN: It is subject to the objection I made.

Paper offered in evidence and marked "Claimant's Exhibit, Leach No. 1."

MR. HAYDEN: Q. So far as this Oregon pine was concerned, was there any Oregon pine loaded in the hold?

A. Yes, sir.

Q. Do you know how much was loaded in the hold?

MR. BOGLE: It will show from the amount loaded on deck, wouldn't it? A. About 1,185,000 under deck.

Q. 1,185,000? A. Yes, sir, Oregon pine.

Q. And the balance would be loaded above on the forward and after deck of the steamer?

A. Yes, the balance of the Oregon pine.

Q. Was there any other cargo than Oregon pine loaded on deck? A. No, sir.

Q. Any lath, pickets, or anything of that kind loaded on deck?

A. I don't recollect, there might have been a few; quite customary to put some around the hatches and winches on deck. That would come under Oregon pine cargo, though.

Q. Was there loaded on deck in addition to the Oregon pine, some red wood? A. Yes, sir.

Q. How long have you been occupied in loading steamers and vessels with lumber?

A. I have been working at it thirteen or fourteen years, in various capacities.

Q. How long have you been the super-cargo for the American Trading Company?

A. Nearly four years.

Q. Were you in a similar position prior to going with the American Trading Company?

A. No, I was tallying and inspecting up to that time.

Q. Tallying and inspecting lumber cargoes?

A. Yes, sir.

Q. At the time you first saw the Strathalbyn, could you tell the exact course she was taking, then, when you saw her off between Dash and Robinson? Could you tell her exact course from what you saw of her?

A. No, I don't think that I could; she was headed pretty well in toward shore.

Q. You say that the light on Robinson Point is a red flash light? A. I think so, yes, sir.

Q. It comes from observation or hearsay?

A. From observation; my recollection is, from passing on the Sound boats, it is a red flash light.

MR. HAYDEN: That is all I have.

RE-CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. You said the Strathalbyn was headed toward shore? Which shore did you mean, the main land?

A. Main land.

Q. Brown's Point side? A. Yes, sir.

Q. Mr. Leach, I want to hand you this photograph

and ask you if that correctly represents the after cargo of the Strathalbyn as she was loaded?

MR. HAYDEN: Was that before or after the accident?

MR. BOGLE: Before the accident.

MR. HAYDEN: That is, before the after cargo was reloaded, or before.

MR. BOGLE: Before it was reloaded.

THE WITNESS: Before it was discharged.

Q. Before it was discharged?

A. Yes, sir, it does and it does not. The lashings have been removed there.

MR. BOGLE: All of the lashings have been removed?

A. All of them; there is not a lashing in sight.

Q. How has that affected the cargo?

A. It has not affected the cargo in any way so far as I can see. The lashings have been removed.

Q. With the exception of the lashings, doesn't it correctly show the condition of the after cargo after it was loaded? A. To my recollection of it, it does.

MR. BOGLE: I will offer that in evidence.

Thereupon said photograph was offered in evidence and marked "Claimant's Exhibit, Leach No. 2", and attached to this deposition.

(Witness excused.)

(Signature waived.)

An adjournment was here taken until Two o'clock P. M. of this date.

Two o'clock P. M., March 25, 1914.

F. P. McINTYRE, a witness produced on behalf of the Libelant, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. What is your full name? A. F. P. McIntyre.

Q. McIntyre? A. Yes, sir.

Q. You are the same Mr. McIntyre who testified in this case heretofore? A. Yes, sir.

Q. You testified, if I remember correctly, that you

saw the masthead light and the port light of the Strathalbyn as the Flyer was approaching her?

A. After the collision?

Q. Before the collision, as the Flyer was approaching the Strathalbyn,—before the collision?

A. That I saw the masthead light and the port light?

Q. Yes. A. That is right.

Q. Did you observe whether or not that light,—either of those lights,—were flickering lights or whether they were steady lights?

A. I didn't pay any particular attention to whether they were flickering or steady; I simply saw the illumination of the bright light and the red light. We were about 1200 feet away, and I could not tell particularly whether they were flickering or not.

Q. Did they appear to go up and come down, as far as you could note, or go up and come down? Did you see any such movement of the light as that? A. No.

MR. BOGLE: I object to that; he has testified that he paid no particular attention to that, except he saw the illumination.

A. The sea was perfectly smooth, but there was no rise and fall to the light or nothing, but the bright light and the red light, the same as all other lights would appear on a vessel.

MR. HAYDEN: Q. Did you notice whether or not the masthead light went out at any time while you were looking at it? A. I did not.

Q. Did you notice the lights on the Strathalbyn as the Flyer was drawing away from her after the collision in coming to Tacoma? A. Yes, sir.

Q. Where were you standing when the Flyer was going away from the Strathalbyn towards Tacoma after the collision?

A. I was on the upper deck by the pilot house.

Q. You were looking back, were you, at the Strathalbyn after you drew away,—while you were drawing away from her?

A. Yes, I stood on the Flyer upper deck and was watching her. She seemed to me to have a starboard list, and very much down by the head.



Q. Did you observe any lights as you were drawing away from her? A. I noticed her side light burning.

Q. Did you notice any other light at that time while you were drawing away from her?

A. You could see the lights on the vessel; we were quite close to her at that time, within speaking distance.

Q. After you left her and came on towards Tacoma, I am speaking about?

A. We passed—came around Robinson Point and came and took the turn, and just as we drew away from her and left her I could see her port and starboard light burning. We only watched her as we passed Robinson, then I went inside.

Q. Did you notice whether the masthead light was burning at that time or not?

A. I would not say particularly whether I took particular notice of the masthead light or not, but I did of the side light.

Q. How far away would you say the Strathalbyn was from you when you last saw the side lights as you were coming from the Strathalbyn on the Flyer after the collision?

A. Possibly half or three-quarters of a mile.

Q. Had the Strathalbyn turned around and was coming in towards Robinson Point? A. Yes, sir.

Q. And the Flyer had turned around and left her and was coming towards Tacoma?

A. It was on her starboard side; we went up and spoke to her and asked if she needed any help, and then turned and went towards Tacoma on her starboard side.

Q. That is, you drew ahead, you crossed from the starboard side over to the port side?

MR. BOGLE: I object to that as leading the witness.

A. As we came towards Tacoma we drew ahead of her and she seemed to turn in towards land, towards Robinson Point; then we could see her port side.

Q. Now, the day after this collision did you go out to the Strathalbyn when she was lying in Tacoma harbor? A. Yes, sir.

Q. Did you then make any observations with respect to whether or not either of the side lights on the

lower bridge of the Strathalbyn were visible from ahead?

A. I did.

Q. State what you did?

A. There was a scow lying on the starboard of the Strathalbyn. I got on the scow and stood on one of the stanchions in front of the scow as far forward as clear and looked along the stanchions of the steamer to see whether I could see that light,—whether it was in the clear or not.

Q. What was the result of your observation?

A. I could see it plainly, yes, sir.

Q. I hand you here this photograph marked “Libelant’s Exhibit, McIntyre A.”, and ask you if you recognize what that is?

A. I recognize the wreck of the Strathalbyn there.

Q. Does that picture show anybody in it that is familiar to yourself? A. I see myself there.

Q. Where do you see yourself?

A. Standing right here with an umbrella in my hand and a white collar on.

Q. Please mark with an arrow pointing to yourself. Draw the arrow down towards the bottom of the picture.

(Witness draws arrow as requested.)

Q. How does your position there, indicated by that arrow, correspond with the position you were in when you looked along the stanchions?

A. I stood on the front stanchion on the port side of the scow on the starboard side of the vessel.

Q. Stood on the stanchion of what?

A. On the stanchion of the scow.

MR. HAYDEN: I offer this in evidence.

MR. BOGLE: I object to it as being immaterial.

(Photograph marked “Libelant’s Exhibit, McIntyre “A”).)

Q. Did the Strathalbyn at that time have any list?

A. Yes, sir.

Q. Which way was she listed?

A. Listed starboard.

Q. Which side was the scow on?

A. Starboard side.

Q. Had the deck cargo been removed? A. No, sir.

Q. Was it apparently in the condition it was loaded in? A. Yes, sir.

MR. BOGLE: I object to that; this witness does not know how it was loaded.

MR. HAYDEN: Q. About what time was it you were out there?

A. About ten o'clock A. M., I should say.

Q. Was that the morning after the collision?

A. Yes, sir.

#### CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. Mr. McIntyre, are you still connected with Sims & Levy, of Tacoma? A. Yes, sir.

Q. You testified in this case some two years ago, didn't you?

A. I testified in the case. I would not say whether it was two years ago or not.

Q. Shortly after the collision?

A. After the collision, yes, sir.

Q. 1912? A. Yes, sir.

Q. You knew as much about this collision then as you do now, didn't you? A. I should say I did.

Q. Mr. McIntyre, what is your business?

A. We supply crews to vessels.

Q. Sailors' home, eh? A. Yes, sir.

Q. Did you supply any portion of the crew to the Strathalbyn? A. Yes, sir.

Q. You get so much for each man you supply?

MR. HAYDEN: I object to that as immaterial.

A. They pay us for the supplying of the men.

Q. They pay you so much a man? A. Yes, sir.

Q. That is your business, getting hold of these sailors and supplying them to these ships?

A. We run a boarding house and take care of the sailors, and when a ship needs men we supply them.

Q. So much a head. At a prior time you were connected with the same business at Port Townsend?

A. Yes, sir.

Q. Do you know Capt. Beecher up there?

A. Yes, sir.

Q. Know him very well?

A. I have known him a great many years.

Q. Where were you standing on the Flyer when you saw the masthead and port light of the Strathalbyn, prior to the collision?

A. I was standing on the port side of the Flyer just abreast the cabin door.

Q. Abreast the cabin door? A. Yes, sir.

Q. Were there any lights in the cabin shining out while you were looking?

A. Lights in the cabin of the Flyer.

Q. Shining out of the windows?

A. Regular lights on the Flyer.

Q. Those were shining out both forward and after you, weren't they, just as they would through the windows? A. Yes, sir.

Q. Did you watch that head light and port light from the time you picked it up until you passed the Strathalbyn?

A. I would not say that I watched it particularly all the time, but I watched the vessel, and at intervals was watching it until we got past her and walked further aft just before the collision.

Q. This port light was a bright light, was it?

A. Red light.

Q. Was that a bright light?

A. Just the same as all vessels generally carry.

Q. Was it as bright as an electric light?

A. Beg pardon?

Q. Was it as bright as an electric light?

A. Well, in seeing a light approaching you cannot tell whether it is an electric light or an oil light, as far as that is concerned. The thickness of the glass, a red glass will show you a red light.

Q. You cannot tell if both were of the same brilliancy—is there any difference in the brilliancy between them and an electric light?

A. I would not say, I did not take particular notice enough for that.

Q. Now, after the collision as you testified, you went alongside the Strathalbyn? A. Yes, sir.

Q. She was turning at that time when you arrived? A. She was backing in at that time.

Q. Bow was swung?

A. The bow—the Virginian was just pulling away from her.

Q. After you had gone over to the Virginian you came back to the Strathalbyn? A. Yes, sir.

Q. And followed the Strathalbyn over towards Robinson Point? A. Yes, sir.

Q. During that time you were on the starboard side? A. I was on the port side of the Flyer.

Q. On the starboard side of the Strathalbyn?

A. Yes, sir, on the starboard side of the Strathalbyn.

Q. How far over towards Robinson Point did you follow the Strathalbyn?

A. We didn't follow her, we passed ahead of her after coming up along side. The captain spoke to her and asked if they needed any assistance, and the captain said, no, he thought he was all right. He said he would proceed to Tacoma and report, and we passed on ahead of them then.

Q. You did not stay along side any length of time?

A. No, sir.

Q. Where was the Strathalbyn when you passed on ahead for Tacoma?

A. She was a very short distance from where they collided.

Q. How far was she from Point Robinson?

A. I should say about two-thirds of the way—about one-third from Point Robinson to the other Point, making two-thirds this way.

Q. That is, a third of the distance north between Robinson and Pulley?

A. Yes, a third of the distance north from Robinson and Pulley, that is north.

MR. HAYDEN: What was the question?

THE WITNESS: He wanted to know how far from Robinson she was.

MR. BOGLE: Q. At the time you left the Strathalbyn, had she straightened around on her course?

A. She had straightened around on her course, and I would say,—not looking at the compass,—about for Tacoma?

Q. Not for Robinson Point?



A. We came up parallel with her on the starboard side of the Strathalbyn. After the captain spoke she turned on ahead; she swung or was swinging, which I could not say. She appeared to swing in, or we were swinging out, so we could see her watch.

Q. You stayed out and watched her? A. Yes, sir.

Q. Was she headed towards Robinson Point?

A. Yes, sir.

Q. As near as you can say?

A. Yes, sir, as near as I can say.

Q. How far do you think she had moved from the point of the collision at the time you left her?

A. I would not say.

Q. Had she gone 100 yards?

A. I would not say.

Q. Well, had she gone more than 100 yards?

A. I could not say.

Q. You know about how far she had gone?

A. No, I cannot say; at night you cannot tell, no one could tell how far they had gone unless they took a bearing of the land and saw how far they had moved. I would not venture to say how far she had gone; I might make an estimate.

Q. What is your best estimate?

A. Oh, I would say possibly 300 yards.

Q. Where was the Virginian at that time?

A. The Virginian had—seemed to be lying about the same position as she was when we left her.

Q. As you watched the Strathalbyn after you passed on, could you see the Virginian too? A. Yes, sir.

Q. What maneuvers was she making, if any?

A. She had a cluster of electric lights hanging down over the bow, you could see the lights down upon the water; we thought it was lights shining through from the inside.

Q. What maneuvers were she making?

A. Could not see what maneuvers she was making.

Q. When you last saw the Strathalbyn, was the Virginian in her vicinity? A. In her vicinity?

Q. In the vicinity of the Strathalbyn when you last saw the Strathalbyn?

A. When we last saw the Strathalbyn, the Vir-

ginian, as I say, was about where she appeared to be right after the collision.

Q. She had moved up along side the Strathalbyn?

A. No, sir.

Q. That is the last you saw of the Strathalbyn?

A. That is the last I saw of her.

Q. Now, Mr. McIntyre, you say that the day after this collision you went over to the Strathalbyn?

A. Yes, sir.

Q. And made these observations? A. Yes, sir.

Q. Where was the Strathalbyn lying at that time?

A. At the head of Tacoma Bay.

Q. Was she on the beach—was she on the bottom?

A. I could not say whether she was on the bottom or not; she was anchored over ahead of the buoy; I could not say whether on the bottom or not, I did not ask, and I don't know the depth of the water there.

Q. Was she at the regular buoy?

A. I would not say whether she was at the buoy or at anchor.

Q. She was up on the mud flats when you saw her?

A. She was up at the head of the Bay, yes.

Q. You are not interested in the Strathalbyn in any way? A. None whatever.

Q. What was your interest in going over there this morning to make observations?

A. Being interested in shipping all my life.

Q. Not a very busy man are you, Mr. McIntyre?

A. I beg pardon?

Q. You are not a very busy man, are you?

A. I am busy at times, then again I am not busy.

Q. You were not very busy the next day?

A. I had nothing to do the next day. Our business is spasmodic, goes along some weeks, sometimes two weeks and we never have anything to do; then again we are busy forty-eight hours on a stretch.

Q. Did you have to get a boat?

A. I went down to Foss's Boat House and several others went down and secured the boat that I went out on.

Q. Do you know Mr. Leach? A. Yes, sir.

Q. Did he go out with you?

A. I think Mr. Leach; I know Capt. Clift went out with us, and I think Capt. Leach, I would not say for sure, as I didn't know Mr. Leach particularly at that time. I also think Capt. Bradley was in the launch, I would not say particularly whether he was or not.

Q. What was your purpose in going out on this trip, Mr. McIntyre?

A. I went out to see how the damage was done and what possibly could have done it and how it could have been done.

Q. At that time was there any question in your mind about that light being obscured?

A. None whatever. I simply wanted to see the damage done to the vessel. My father was a seafaring man.

Q. That is all right; we want to get down to the facts. I want to know for what purpose you went out that morning?

A. I went out to see the damage done to the vessel.

Q. It had never occurred to you at that time that there might have been an obscuration of those lights?

A. Not in the least.

Q. Notwithstanding that fact, you went over and got on the scow, climbed on top of the stanchion to make an observation to see?

A. I got up on the stanchion to take a look to see if by any possible chance anything of that kind occurred.

Q. Never occurred to you that might have happened at that time? A. Never has, no, sir.

Q. You wanted to get up there to see whether it did? A. I did.

Q. It must have occurred to you it might have happened. You had thought of that, hadn't you?

A. Do you mean I had thought that was the cause of the collision?

Q. Thought that might have caused the collision? That had occurred to you, hadn't it?

A. No, it had not.

Q. Still you went out to make your observation without ever thinking about—

A. I did, yes, sir.

Q. What time do you think this was, what time of day?

A. I should think about ten o'clock in the morning.

Q. Did you say anything to Mr. Leach about your observation or your suspicions, if you had any?

A. No, sir, didn't speak to anyone about it at all. The only remark I ever made to any one at all was how it was possible for two vessels of that kind, at that time of night, to collide, when you could absolutely see the vessels.

MR. BOGLE: I move to strike that out.

Q. Answer the questions and we will get along better. I do not care about any of your observations.

A. All right, sir.

Q. At the time you made this observation had they started to unload any of the cargo from the Strathalbyn?

A. They had not.

Q. Had the deck lashings been loosened at that time? A. I would not say.

Q. Did you see any deck lashings on the cargo?

A. I would not say whether I did or not, because I did not take notice of them.

Q. Did you know that this picture was being taken?

A. At the time it was taken I did, yes, sir. I did not know that picture was to be taken, I knew they were out there, several photographers, taking different photographs.

Q. How was this scow lashed along side the Strathalbyn? A. I would not say.

Q. Was the stanchion on the scow upon which you stood to make this observation along flush with the hull of the Strathalbyn?

A. No, sir, it was not flush with the hull of the Strathalbyn; the scow was lying against the Strathalbyn and the stanchion was set in possibly twelve inches.

Q. On the scow?

A. Yes, so I had to lean over and put my hand against the deck load, this way (illustrating) to look along the side.

Q. So this portion of the scow where you were standing was not flush with the side of the Strathalbyn, the scow itself?

A. I would not say exactly whether it was absolutely up against her or not.

Q. And did you stand at the position where the arrow indicates you are at the time of making this observation? A. No, sir, I did not.

Q. Upon what stanchion did you stand?

A. I stood upon the forward stanchion, one of these stanchions right here (indicating on photograph). I would not point exactly, but I was on one of the stanchions here which was just ahead of two of the uprights on the deck load, and looked ahead.

Q. The stanchion you point to is the last stanchion forward, on the inside—on the side of the scow close to the vessel?

A. You say it is the last stanchion? No, I would not say it is the last stanchion forward. I would not say whether it was a bit or whether it was a stanchion; it was one of the stanchions right along the row with the side of the scow. Say this is the scow, there is a row of stanchions along the scow (indicating on photograph).

Q. You will have to demonstrate that?

A. I was standing on a stanchion on the forward end of the scow, so I could lean against the deck load and look after and see the lights past the uprights on the steamer, that is as near as I can get it.

Q. That is on the starboard side of the steamer?

A. Yes, sir.

Q. Did you make any observations on the port side?

A. I did not.

Q. You stood on that stanchion and leaned over against the stanchions on the steamer, did you?

A. Stanchions or deck load? I leaned against the vessel and looked along outside of the uprights that held the load on the vessel.

Q. What do you mean by the "uprights"?

A. They are timbers that are up and down to hold the deck load.

Q. Were those timbers standing straight up and down?

A. I would not say exactly straight up and down. I didn't put a level on them; they were upright.



Q. Were they apparently straight up and down on a line with the vessel?

A. Do you mean fore and aft, or athwartships?

Q. Straight up and down.

A. Do you mean a line fore and aft, or athwartships?

Q. Did these stanchions lean up or down or outward? A. I did not take notice.

Q. If they had leaned one way or the other, do you think you would have noticed it in making this observation? A. I don't think so.

Q. The Strathalbyn had considerable list at that time, didn't she? A. Yes, sir.

Q. This scow was not flush with the rail, the hull of the Strathalbyn, was it?

A. Do you mean so you could step aboard flush?

Q. No, wouldn't it lay on an angle to the hull?

A. No, the scow would be upright.

Q. The scow would be upright, but the steamer leaning to starboard would have a tendency to overhang the scow, wouldn't it?

A. So few degrees she would not show,—few degrees of the list she would not very perceptibly. Possibly if there was a perceptible deviation, it would not be noticed, although if the upper part of the scow was absolutely against the hull of the vessel there might be a distance that the lower part of the scow at the water line would not be against her, that would not be perceptible looking down.

Q. How much of a list do you think the Strathalbyn had at that time? A. Possibly five degrees.

Q. And you could not tell which way these stanchions were leaning? A. I did not take notice.

Q. What could you see standing on top of this stanchion on the scow? What could you see of the light box? There was a light in the box at that time?

A. I don't remember exactly whether the light was in the box at that time or not, but I think it was.

Q. Could you see the light itself?

A. That was day time.

Q. From where you were standing on this scow

making your observation, could you see the starboard light? A. You mean light or lamp?

Q. The lamp.

A. I don't remember exactly at this time now whether the lamp was in there or not.

Q. You don't remember whether you saw it or not?

A. I remember I saw the screen box.

Q. Do you remember whether you saw the lamp or not?

A. I would not say whether the lamp was in there or not.

Q. I am not asking you whether it was in there, I am asking you whether you saw it or not?

MR. HAYDEN: How many times does he have to say he don't remember?

A. I would not say, because I told you I did not remember.

Q. You do not remember whether you saw it? I am not asking you whether you remember it was in there or not, I am asking you whether you remember that you saw it? A. I said that—

Q. Standing on this scow, making your observation, did you or did you not see the light itself, the globe or lamp? A. Do you mean lamp or light?

Q. The lamp?

A. All right, sir. As I stood up there and looked, I don't remember whether the lamp was in the screen or not at this time. But had I been asked the next morning I would have told you, but at this time I don't remember, but I saw the screen box and I think the lamp was still in it.

Q. Well, now, you do not remember whether you saw the lamp or not, is that what you want to testify to?

A. I am telling you just what I said; I would not testify any different.

Q. I am asking you when you stood there whether you remember seeing that lamp or not?

MR. HAYDEN: I object to this; it has been answered five or six times already.

MR. BOGLE: Let him answer. He says he don't remember whether the lamp was in there or not.

MR. HAYDEN: I submit he has answered that question.

A. I told you at the present time I could not say whether it was or not now, but I think the lamp was there. That is what I said before.

Q. If that is all you can say, Mr. McIntyre, we will let it go at that. What did you see of the light box, Mr. McIntyre, on the starboard side?

A. What did I see of the light box?

Q. Yes.

A. Well, I didn't take any particular notice as to any portions,—particular portions of the light box,—but I could see the whole screen.

Q. In saying the screen, you mean the block on the forward end of the light box?

A. No, sir, I mean—there is a—of the long box, supposed to be about four feet, you could see the side of it, because I was a little out and you could see the side of it looking that way, and you saw right along the side of the block, you could see the whole thing. You could not see the back because you could not see through wood.

Q. You could see the forward end of the after end of the—the board which forms the back of the light screen, you could see the face of it?

A. I could not see the face of that. I don't remember whether the light was in there or not; if the light was in there I could not see the face.

Q. I am not trying to get at that, I am trying to find out what you saw?

A. Oidin't I tell you I don't remember whether the light was there or not? If at this time of day the light was there, I could not see that, it would be imposible, and I would be lying if I told you I did. I am telling you what I saw just as I remember it.

Q. Just tell me in detail what you saw as you remember it?

A. I saw the screen box, the side light screen, that is what we will call it.

Q. Now, referring to the screen box? A. Yes, sir.

Q. You saw the length,—the long board which runs parallel with the line of the ship, did you?

A. Fore and aft.

Q. You saw that board, did you?

A. If the light was in there I could see the entire board, because the light is about 12 inches, and that was set out 12 inches with the back end of it.

Q. You do not remember about that particularly; but did you see the rest of it?

A. Yes, sir.

Q. Now, there is a block at the forward end of the light screen, a board?

A. Some vessels have a small block and others don't.

Q. Did this vessel have a small block?

A. I would not say.

Q. You were a little bit out from the line of the stanchion looking—

A. I was on the outside of the line of stanchions, my face against the stanchions.

Q. And you were below this light box, weren't you—lower down weren't you? A. I should say yes.

Q. Now, Mr. McIntyre, you do not remember whether there was a block on the forward end of the light screen or not?

A. I did not take particular notice, I did not go aft and look at it.

Q. You do not know whether there was a light in the screen or not?

A. At that time I knew and I could have told you, but since that time, not being interested in the matter, I do not remember. My memory is not everlasting.

Q. I do not think it is.

A. If I had notes to go by, or something, or figures, I could tell you, but I don't remember.

Q. Did you make notes at the time?

A. I did not, I had no occasion to.

Q. Did you have all of these details in mind at the time you testified before? A. All what details?

Q. As to what you saw? A. I could not say that.

Q. As a matter of fact, now you haven't a very clear recollection of what you did see, have you?

A. Why, I told you what I saw.

Q. That is not a very clear recollection of what you actually saw?

A. Yes, my recollection is perfectly clear; I could not state whether the lamp was in there or not.

Q. You could not state whether it had a block on the forward end or not?

A. I did not take particular notice; I saw the screen there.

Q. All you saw looking along there was that there was a screen up there. You don't remember now what portions of that screen you saw?

A. I told you I saw the face of it, and the hole in there as the picture would take of the screen, the vision of the eye.

Q. You saw the entire face of it, did you?

A. With the exception of the light was in there, I could not see the part that was covered by the lamp.

Q. In other words, you do not remember what you did see, do you?

A. That may be possibly what you say.

Q. If you did, I would like to know.

A. I would like to tell you, sir, if I did.

Q. I think it is perfectly apparent that you did not.

MR. HAYDEN: I think it is apparent that he has testified to that half a dozen times already; all he remembers he has testified to.

MR. BOGLE: Q. Is that all you remember you saw? A. Yes, sir.

Q. That is all you remember that you saw, the face of the light screen?

A. At the present time, yes, sir.

MR. BOGLE: That is all.

RE-DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. You haven't any doubt but what you saw sufficient of the light screen to have shown a light if it had been there?

MR. BOGLE: I object to that.

A. Just as plain as I see this man sitting over here.

MR. BOGLE: Q. Why did you say that, if you don't remember what you saw?

A. Because I told you I saw a light screen; what more could I tell you.

MR. BOGLE: Q. Merely saw the face of the light



screen? You are perfectly sure the light was not obscured?

A. I had nothing to do with the light being obscured.

MR. BOGLE: Q. That is what you were trying to find out when you got up there? A. Yes, sir.

MR. BOGLE: Q. You testified yourself that it was not obscured? A. Yes, sir.

MR. BOGLE: Q. Being so, even to the light screen?

A. To my satisfaction, yes, sir.

(BY MR. HAYDEN.)

Q. You say that you have been to sea? A. Yes, sir.

Q. When did you start going to sea?

MR. BOGLE: I object to that as being improper redirect examination.

A. I went to sea with my father when I was a very small boy.

Q. Did you go frequently? A. Yes, sir.

Q. Have you been to sea since you got to be older than a small boy? A. Yes, sir.

Q. What positions have you been to sea in,—that is, what position did you occupy when you went to sea?

A. Passenger since I was grown up.

Q. Have you always been connected with the sea-faring business? A. Yes, sir.

Q. How old are you now? A. Forty-two.

Q. Have you any relationship or connection in business or otherwise with anybody that has anything to do with the Strathalbyn or her cargo? A. No, sir.

RE-CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. You are a personal friend of Capt. Beecher, are you? A. No.

Q. Did you know him at Port Townsend before you moved down here? A. Yes, sir.

Q. Have you had any talk with Capt. Beecher about this? A. No, sir.

Q. Did you take as much interest in every collision that has happened as you did in this one?

A. I have no particular interest, only examined as a witness and tell what I saw.

Q. I am talking about activity in making this observation and this trip over there?

A. I never have had occasion.

Q. This is the only one you have been mixed up in, is it?

A. No, sir, not any collisions, but several vessels have put back here in distress, to dismiss their load, and things like that, and I have gone aboard and looked at them.

Q. How long has it been since you went to sea?

A. How long has it been since I went to sea?

Q. Yes. A. In 1894—no, '97.

Q. About seventeen years—have you been connected with the Sailor's Home ever since.

A. I have been connected with the Sailor's Home for thirteen years.

Q. Are you in charge of the Sailor's Home?

A. I am one of them in charge.

Q. What are your particular duties?

A. Particular duties are to see the captains when they are ready for sea and desire crews, to fit the men and take them aboard the vessels.

Q. Is the latter part the important part of your duties, to take them aboard the vessel? A. Yes, sir.

(Witness excused.)

(Signature waived.)

ANDREW WAADNE, a witness produced on behalf of the Libelant, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. What is your name?

A. My name is Andrew Waadne.

Q. Where do you live? A. 2711 North 30th.

Q. Were you living in Tacoma when the Strathalbyn was loaded with the cargo that she carried on the night she came into collision with the Virginian?

A. I was, yes, sir.

Q. Did you have anything to do with loading that cargo on the Strathalbyn? A. I did, yes, sir.

Q. Did you have anything to do with fixing the stanchions on the forward deck?

A. I did, yes, sir, I superintended putting them up.

Q. Will you please state how those stanchions were placed and whether or not they were upright or leaned outboard or leaned inboard?

A. Well, they were placed good and solid, because there is one thing that I pride myself on in stevedoring, and that is putting up stanchions.

Q. How were those stanchions put up on the forward deck of the Strathalbyn?

A. What do you mean, for being upright?

Q. Yes; how did you put them up; how did you fix them?

A. Well, when I start to put up stanchions I generally get up say two or three feet on the deck and put up a stanchion deck generally out of the cargo.

Q. You mean you put the cargo two or three feet out of the deck? A. Yes, sir.

MR. BOGLE: You testify to this particular cargo on the Strathalbyn? A. Yes, this particular cargo.

Q. This particular cargo, how you loaded that?

A. Well, as far as I remember, I done the usual way. I put in the stanchions after I got up two or three feet on the deck so I can block them solid against the lumber and main bulkhead; I start that after stanchions. I take the men that is working for me there and have them raise the stanchion up against the rail, then I stand on the fore part of the stanchion and look against the house midships and super-structure, get in the right position I want him, and I always give them a lean in. In this particular case they were leaning in.

Q. Then what do you do? You have been describing how you put in the stanchions? A. Yes, sir.

Q. First forward of the house. How do you do with the other stanchion?

A. The next one I take a line of the forecastle; I take a line on that through the stanchion.

Q. And do what with it?

A. Well, put it with line with the first one I put up, put it in the same position.

Q. You do that all the way up? A. Yes, sir.

Q. All the way up forward?

A. All the way up forward.

Q. Do you remember the size of the stanchions that were used on the Strathalbyn for this forward cargo?

A. I do, they were 6 by 12.

Q. Which side of the stanchion was placed against the rail? A. The flat side, the 12 inch side.

Q. That was so with all of the stanchions?

A. All of them, yes.

Q. Did you observe the Strathalbyn after she had been unloaded and reloaded? A. I did, yes, sir.

Q. Did you at my request go out and see whether or not the stanchions were—how they compared with the stanchions on her—that is, how the stanchions that were put on her when reloaded compared with the stanchions that were put on her when you loaded her?

A. Yes, I did.

Q. You made that observation, did you?

A. I did make that observation.

Q. How did they compare?

A. On one side they were just about the same thing.

Q. Which side.

A. On the port side. They were just exactly, with the exception of one that was out of line that fell down and was put up again. It appeared as though it had fell down and put up again afterwards; that seemed to be out of line.

Q. How much was the other side, the starboard side?

A. The other side was further out than it had been before, to my judgment.

Q. Did you while the Strathalbyn was unloading have anything to do with the unloading of her when she came in?

A. I discharged the forward deck, except for a few timbers that were down on the forward deck, on the bottom of the deck.

Q. Did you make any examination of the stanchions as they were standing after the Strathalbyn came in before the deck cargo was taken off?

A. Well, I made no special examination, but I remember that they all appeared to me to be in the same

position they were put in. The hand rails were still solid on the stanchions. They were nailed along to keep people from falling overboard, about three feet from the deck.

Q. Did you sight along the outside of the stanchions on either side to see whether or not you could see the light screens, before the deck load was taken off?

A. No, sir, I didn't.

Q. Did you after the deck load was reloaded, at my request, sight along to see whether or not you could see the light screens on the outside of the deck load?

A. I did.

Q. Could you see them?

A. Anything on the port side, yes; it is clear on the starboard side, was straight ahead.

Q. While you were on the forward deck of the Strathalbyn did you notice whether or not you could see the light screens through the stanchions or behind any of the stanchions; that is, after the cargo was reloaded?

A. Yes, sir.

Q. Did you make that observation before the cargo was taken off? A. No, I did not.

Q. Could you see the light screens through the stanchions on the Strathalbyn after she was reloaded?

A. I did, on the port side; I did not notice on the other side.

Q. Referring now to these photographs marked "Libelant's Identification Leach A. and Leach B.," I will ask you if you recognize what they are photographs of?

A. Yes, they appear to be photographs that was taken while I was with you that time.

Q. On what ship?

A. On the Strathalbyn, as far as I can see. That one, this one here (indicating)—they appear to be the same pictures of the Strathalbyn after she was reloaded.

MR. HAYDEN: I now introduce them in evidence.

MR. BOGLE: I object to these photographs; no showing as to when they were made or how much cargo she had aboard.

Thereupon said photographs were marked "Libelant's Exhibits, Leach A. and B."



Q. Can you point out on Leach's Exhibit A. and Leach's Exhibit B., where the port light screen appears on this photograph?

A. Right in there (indicating on photograph).

Q. Just take a pen, if you will, and draw narrow lines from where the light screen—draw it down on the deck cargo from the light screen, if you will.

(Witness draws lines as requested.)

Q. Now, that is on Leach's Exhibit A. Now, will you also do the same on Leach's Exhibit B.

MR. BOGLE: This is all subject to my objection.

MR. HAYDEN: Yes.

(Witness draws as requested.)

MR. HAYDEN: Now, I hand you Claimant's Exhibit, Capers' C., a photograph, and ask you if the stanchions on the Strathalbyn were positioned as they are shown in that photograph at the time you loaded her before the collision?

A. No, certainly they are not in that position.

Q. What is the difference?

A. The difference is that these seem to be out on top a whole lot more than they were at the time she was loaded by me, when she had the collision.

Q. I hand you Claimant's Capers Exhibit E., and ask you if that photograph shows the way the stanchions were arranged on the Strathalbyn when you fixed the cargo on her prior to the collision?

A. No, it does not.

Q. What is the difference?

A. The difference is these were further outboard on top.

Q. What do you mean by "these"?

A. These stanchions here.

Q. Further outboard?

A. Further outboard on top, yes.

CROSS EXAMINATION.

(BY MR. BOGLE.)

Q. What position do you occupy with the American Trading Company, if any?

A. Why, foreman sometimes.

Q. You were in loading the Strathalbyn prior to the collision, were you? A. I was, yes.

Q. Mr. Waadne, do you remember in detail now the way that forward deck load was loaded on the Strathalbyn prior to the collision?

A. I would not say I remember all the details, no.

Q. Did you take particular note of whether or not those stanchions were outboard or inboard on a vertical line?

A. I took particular notice of that because I always put them inboard. I know I put them that way that time.

Q. Did you put them inboard with reference to the light on the lower bridge?

A. No, what I mean inboard, I mean inboard on a perpendicular line.

Q. How did you do that, Mr. Waadne?

A. How do I do it? Well, I do it; when the men raise the stanchion up I stand, say, on the forward deck,—I stand on the forward part of the stanchion.

Q. At the time of loading the Strathalbyn, do you remember of doing this? A. I do, yes, sir.

Q. Just tell what you did, not what you usually do, what you did this time?

A. I stood on the forward part of the stanchion, looked on the outside of it against the superstructure of the vessel.

Q. You were standing viewing along side the rail?

A. Yes, sir.

Q. You tried to get that stanchion so that it followed the line of the ship?

A. I tried to get it so it would lean in, make it stronger.

Q. The vessel's lines as she comes in on the superstructure?

A. Well, I don't remember particularly whether the superstructure comes in on the Strathalbyn or not; some comes in and some comes pretty nearly straight up.

Q. Did you sight along the stanchion to get it on a line with the super-structure?

A. I take notice how the superstructure is built, whether that is perpendicular on the vessel or whether it runs on a line of the ship. Then, if it runs with a line of the ship, I just give it a little more turned in than the

superstructure is out. If the superstructure seems to be without perpendicular, then I give it considerable more lean in according to the superstructure.

Q. That is your usual way of loading a ship?

A. That is the usual way of putting up stanchions, yes.

Q. I want to get at the way you loaded the Strathalbyn; do you remember that now?

A. I remember I leaned them to me—leaned them inboard on top.

Q. You have loaded a good many vessels since that time? A. Quite a few.

Q. Do you remember particularly how you loaded the Strathalbyn independent of your usual method of loading the ships?

A. I remember how I put up the stanchions.

Q. You remember on the Strathalbyn how you put up the stanchions? A. I do.

Q. That is what we want to get. How did you put up those stanchions?

A. When I put up the first stanchion, I stood on the fore part of it, stood on the outside of the stanchion against the superstructure of the vessel, and gave it a good turn in.

Q. How much did you turn it in?

A. Probably a foot on the length of the stanchion, 12 inches.

Q. 12 inches. Do you mean by that you turned it 12 inches from a perpendicular line inboard?

A. Yes, sir.

Q. And then you used that stanchion in putting up the others?

A. It might be more than that, I didn't measure.

Q. Would it be less?

A. I don't think it was any less.

Q. But do you remember, now, Mr. Waadne, just how much it was?

A. I am not clear within a couple of inches either way.

Q. Did you put it in with reference to the lower bridge, or did you just have the lower bridge in mind at that time?

A. I put it in with reference to the lower bridge, and the stanchions supporting the lower bridge; that is the way I generally go about it.

Q. You follow the line of those stanchions?

A. I did not follow the line, but I judged by those stanchions.

Q. Those are permanent stanchions on this ship?

A. The stanchions supporting the lower bridges are the permanent stanchions, yes, sir.

Q. Do I understand then that this stanchion is placed by you approximately one foot inboard of the vertical line?

A. Approximately that.

Q. Now, as you loaded your cargo, was that cargo loaded up against the line of those stanchions,—laid up against those stanchions?

A. Yes, the cargo followed the stanchions.

Q. Was there any tendency there to force those stanchions outboard, Mr. Waadne, as you completed your deck load?

A. There might be a tendency if the stanchions are not leaned inboard; that is the reason I always lean them inboard, so they have more strength. If you put the stanchions up perpendicular, then if the vessel gets a list, they are liable to bend over outboard some.

Q. What I mean by putting deck cargo on the vessel, does that have a tendency to force the stanchions out?

A. Not with a vessel laying there on an even keel.

Q. This vessel was not laying on an even keel?

A. Not after you get up on the deck there is.

Q. Did you take any particular observation during the time of the loading of the Strathalbyn, up to and including the time the loading was completed, prior to the collision, to ascertain whether this line of stanchions were inboard or outboard?

A. I don't remember taking any particular notice that there was any little cant from strain of the cargo.

Q. You did not take any particular notice?

A. No, I did not. If it had been much I would have noticed it, I know.

Q. Now, when the vessel returned after the collision, you say her cargo was in practically the same condition as it was when she went out?

A. Appeared to be so, yes, sir.

Q. Do you remember the size, the average size, of the timbers on the forward deck load?

A. Average size?

Q. Average; were they large or small?

A. Well, that is a pretty hard thing to remember two years ago. I know there were some long timbers.

Q. That is not any harder to remember than the location of those stanchions, is it, Mr. Waadne?

A. It is that, yes.

Q. It is harder to remember?

A. Yes. When I say I remember the lumber, why, I just make a guess at the average Australian cargo, that would be about the size of it.

Q. Do you know how much lumber you put on the forward deck prior to the collision?

A. You mean the amount in feet?

Q. Yes. A. No, I don't.

Q. You loaded her after the collision when she went out, after the repairs were made? A. No.

Q. You had nothing to do with that?

A. No, the stevedores done that.

Q. They loaded her in practically the same way you had prior to the collision?

A. Practically the same way, yes.

Q. The stanchions were standing practically the same way?

A. Practically, little more out on one side, on the forward deck.

Q. Some of the stanchions on the port side had fallen down?

A. Seemed to be out further than the rest of them.

Q. Do those stanchions get misplaced very often during the course of loading?

A. Sometimes one stanchion, in heaving in the breast of the hatch, that would be knocked down and had to be replaced again.

Q. At the request of Mr. Hayden, you paid more



particular attention to the position of those stanchions after,—subsequent to the collision?

A. Yes, sir, I did, in order to compare them with the way they were before.

Q. You did not pay very close attention to making any minute examination before the collision?

A. That was so shortly before I had it in my mind at that time how they were put up.

Q. Do you remember talking with me about this once, don't you, Mr. Waadne?

A. I think you were up to the house, once, wasn't you?

Q. Yes. Do you remember my asking the questions as to whether or not the stanchions were upright or outboard?

A. I don't remember all the questions you asked me at that time.

Q. Do you remember my asking you that question?

A. No, I don't remember now what questions you did ask me.

Q. Do you remember telling me you did not remember whether—whether it was vertical or exactly how it was?

A. I don't remember what I told you at that time now. If I had known I would have answered just the same anyway.

Q. That you did not remember?

A. I don't remember, I was not going to stand on oath. I was not on oath at that time. I was not on the stand or under oath at that time. I don't think I gave you any information of any kind to speak of at that time.

Q. With the exception of that one thing is all that you remember?

A. Well—I don't remember what I answered you at all or your questions at that time.

Q. You previously to that time talked to Mr. Hayden?

A. I don't know whether it was previously or afterwards, I don't remember.

Q. That was shortly after the collision, wasn't it?

A. When you was up to my place?

Q. Yes.

A. I don't remember what time it was; whether it was previously, afterwards, or two or three months afterwards, I don't remember.

Q. It was within two or three months, wasn't it?

A. I don't remember, I am sure it might be six months after for all of my saying now, I don't remember now.

Q. Were you present when those photographs, Libellant's Exhibit Leach A. and B. were taken?

A. I was, yes, sir.

Q. Who took those photographs?

A. Mr. Hayden took them as far as—at least, they appear to be photographs taken from the same position taken when I was over there with him.

Q. What was the condition of the load at the time the photographs were taken?

A. She was finished lashing with all on.

Q. Lashings were all on, were they?

A. They were on the forward deck; I don't remember the after deck. I think they were putting them on the after deck at the time.

Q. Referring to Libellant's Exhibit Leach B., this ink line that you have drawn shows what?

A. It shows where the light screen shows, from the forward part of the deck.

Q. What portion of the light screen is that, Mr. Waadne? A. That is the——

Q. At the forward or after end of that screen?

A. I think that is the forward block.

Q. You think that is the forward block?

A. The edge of the forward block.

Q. Can you tell from this photograph whether it is the edge of the forward block or not?

A. Well, I don't know, it is pretty hard to tell from the photograph now.

Q. Looking at this photograph between the first stanchion and the second stanchion forward, is there a place between the outside of that light screen and the second stanchion where you can see in the clear?

A. Well, you can see the after block of the light screen through part of it.

Q. Then, is that the after block of the light screen where you have your ink line drawn to?

A. That appears to be in a ways from the outer edge of the after block, apparently.

Q. You can see a clear space between this second stanchion and the outside edge of that, can't you?

A. Yes, it appears that way, yes.

Q. Then, is that the after block of the light screen?

A. Apparently.

Q. That is, where you got your ink line drawn?

A. On this one here (indicating); here is the forward block on the inside of that stanchion.

Q. Just draw a line to the forward block on the inside of that stanchion. Mark the first with "A" and the second with "B."

MR. HAYDEN: Draw the lines going away from each other some.

MR. BOGLE: Make a "B" at the end of that.

(Witness draws as requested.)

Q. Now, make an "A" at the other one.

(Witness draws as requested.)

Q. Now, where this line "A" runs to, in your opinion, what does that show?

A. It shows in the face of the—it will show right in the light screen.

Q. Is that the after end of the light screen?

A. It will show inside—it will show right against the after end of the light screen outside of the forward block.

Q. "B" shows the forward block of the light screen?

A. Apparently, yes, sir.

Q. Do you know where that photograph was taken from, Mr. Waadne,—what position?

A. That photograph was taken from the fore-castle ahead, by the looks of it.

Q. Midships? A. No, on the port side.

Q. On the port side? A. It looks to me.

Q. What is this rail here—fore-castle?

A. That is the fore-castle rail, yes, sir.

Q. What is the opening on the left-hand side of the picture, is that where the stairs are?

A. There is an opening on that, on either side.

Q. Opening on either side?

A. It is as far on one side as on the other; opening from there going down on either side from the fore-castle head.

Q. You think that photograph was taken considerably over on the port side?

A. It was taken somewhat on the port side, anyway, yes, must be.

Q. What is this showing on the other end of the bridge, that little spot there (indicating on photograph)?

A. Down on the corner, down there (indicating)?

Q. No, right at the end of the bridge.

A. That is a little screen on that side, apparently.

Q. Is that at the forward end of the starboard a light screen? A. It seems that way, yes.

Q. Mark that with a "C," put a "C" on there.

(Witness does so.)

Q. Now, referring to Libellant's Exhibit, Leach A., does that line run—is the point showing there forward or after end of the light screen?

A. That is the forward end of the light screen.

Q. That is the ink line?

A. Ink line right on the fore part of the block—the block on the fore part of the light screen.

Q. Do you know, Mr. Waadne, whether the Strathalbyn at the time these pictures taken, had the same amount of forward deck cargo as she had when fully loaded prior to the collision?

A. Well, practically the same, I would not say within a few feet, but I understand that is just about the same cargo went on her as in the first place.

Q. Do you know whether she had the same amount of cargo both times?

A. I don't know that she had just the same amount.

Q. How much did those stanchions come inboard after she was loaded the second time, subsequent to the

collision, as shown on those two exhibits? How much did the stanchions come inboard from the vertical line?

A. I don't know, I didn't measure them; I should think about 12 inches.

Q. Then, your comparison is merely from observation, and not from any accurate measurements?

A. Yes, I would have to have a survey and measures—the vessel had four or five degrees list, from appearance.

Q. That is your estimate?

A. That is my estimate from my practical experience.

Q. Did you load the forward deck cargo any different from the ordinary stevedore foreman?

A. No, I don't think I did.

Q. They all place those stanchions about the same?

A. That is according to each individual's way of doing it, how to put the stanchions up.

Q. This particular examination that you made after the repairs were made, was at the request of Mr. Hayden, was it? A. It was, yes, sir.

Q. Did he tell you for what purpose that was to be had and why he wanted you to make that examination?

A. As far as I remember, he asked me to come along and take a trip over to the Strathalbyn; she was loaded again, and take a look and see what she looked like this time.

Q. That was all, was it?

A. He says, "I am going to take some photographs and I want you to see how I take them." I remember he had to take photographs and he wanted me to see how he was taking them.

Q. Did he only take these two photographs?

A. I don't remember how many he did take.

Q. This photograph, Libellant's Exhibit Leach A., could you tell where that was taken from; where the camera was placed? Do you remember of seeing that photograph taken?

A. I remember seeing him taking photographs from three or four different positions aboard the ship. This



one is apparently taken from about midships on the forward deck load, just about the forecastle head.

Q. Mr. Waadne, where were you standing when you could see the light screens through the stanchions on the port side?

A. I was standing well forward on the port side.

Q. How far from the rail—from the stanchions, rather? A. Maybe ten or twelve feet.

Q. Ten or twelve feet inboard? A. Yes.

Q. How far forward from the light screen itself?

A. I seen it from the forecastle head once; on top of the deck load, also.

Q. Standing on the forecastle head?

A. On the fore part of the deck load.

Q. Standing on the forecastle head 10 or 12 feet—

A. 10 or 12 feet inboard from the line of the stanchions on the forward deck.

Q. Now, you could see part of the light screen through what—between what stanchions?

A. I would not say now just which stanchion it was, it must have been the forward stanchion from the forward deck, I should judge. I remember seeing—remember seeing the screen, I would not swear to which stanchion I seen them now.

Q. Could you tell whether it was between the first and second stanchions?

A. I am not positive; I think it was.

Q. Between the first and second; that is, when I say the first and second, I mean the first and second immediately forward of the bridge? A. Yes, sir.

Q. Do you think it was between those two stanchions?

A. I would not say now—I would not say now which one it was.

Q. Can you remember now whether it was between the first and second or second and third, or whether it was further between the stanchions, further forward?

A. No, I don't remember now.

Q. Do you remember what portion of the light screen you saw?

MR. HAYDEN: I think that has been gone into, making the figures and everything else.

MR. BOGLE: Between the stanchions.

MR. HAYDEN: I don't think it is material, but I think it has been gone over enough times for the record to be clear on it.

A. No, I would not say just which portion of the light screen I did see. I think, though, I could see all the light screens at the different times if I moved my position.

Q. Well, you might see all between the stanchions inside of the first stanchion. Could you see any of it inside the first stanchion? A. Some, yes.

Q. Is there any position from which you could see the entire light block on the forward end of the light screen inside of the first stanchion?

A. The entire light screen?

Q. The forward block of the light screen?

A. No, I don't think so, no.

Q. Would you say, Mr. Waadne, that when this cargo was completely loaded prior to the collision that the stanchions were all in practically the same angle?

A. Yes, sir.

Q. Practically the same line? A. Yes, sir.

(Witness excused.)

(Signature waived.)

(Filed May 28, 1914.)

#### DEPOSITION OF GEO. D. BEAUMONT.

Testimony of GEORGE D. BEAUMONT, a witness on behalf of Libelant, taken at Tacoma, Washington, March 27, 1914, before Raymond J. McMillan, U. S. Commissioner, under the order of the above named Court, and stipulations by Proctors of the respective parties, it being particularly stipulated that the testimony of the above named witness may be used without objection on account of the said witness not reading or signing his testimony, which signing and reading is particularly waived.

The Libelant appearing and being represented by Mr. W. H. Hayden, of Proctors for Libelant.

And the Respondent, Cross Libelant and Claimant appearing and being represented by Mr. Lawrence Bogle, of Proctors.

WHEREUPON, the following proceedings were had and done and testimony taken, to-wit:

GEORGE D. BEAUMONT, a witness produced on behalf of the Libelant, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. Your name is what? A. George D. Beaumont.

Q. Mr. Beaumont, were you on the Flyer the night that the Strathalbyn and Virginian came into collision, on the 12th of January, 1912? A. I was.

Q. What was your business at that time?

A. I was putting in an oil plant for the Chicago, Milwaukee & St. Paul Railway Company, Tacoma.

Q. Where were you living at that time?

A. Tacoma.

Q. Who were you working for?

A. Chicago, Milwaukee & St. Paul Railroad.

Q. What is your business now?

A. Selling machinery.

Q. What companies have you worked for in the last two years selling machinery?

A. Fairbanks-Morse Co., and Contractors Equipment Co., Seattle.

Q. How long have you been in this part of the country? A. Since October, 1909.

Q. What were you doing before you came here?

A. I was working in Louisiana in the oil business and I was also in the custom service.

Q. Where were you in the customs service?

A. Port Morgan.

MR. BOGLE: I object to all this as being immaterial.

MR. HAYDEN: What were your duties in the custom service?

A. I was inspector of the boats in that port, seeing to it that they had their proper papers, proper equip-

ment, and that they complied with the rules and regulations of the department.

Q. Did the equipment have to include the lights as well as other things aboard the boat?

A. Most certainly.

Q. Now, then, you left Seattle on the seven o'clock Flyer? A. Seven o'clock.

Q. Where were you sitting on the Flyer when you got up somewhere in the vicinity of Pulley Point?

A. I was sitting on the seat that runs around the forward end of the cabin.

Q. Upon what side of the Flyer?

A. Left-hand side of the boat.

Q. Did you observe the Virginian as you were coming from Seattle? A. Yes, sir.

Q. Did you notice what the Flyer did in passing her at or about Pulley Point?

A. Well, the Flyer swung out in order to pass her and give her a wide berth.

Q. Swung out and passed here on what side?

A. Right-hand side.

Q. That is, passed the Virginian's right-hand side?

A. Virginian's right-hand side.

Q. Did you observe the Strathalbyn as the Flyer was approaching her?

A. I did, after we had got down—oh, after we passed the boat that was headed for Tacoma, after we passed her and got down a ways I saw another boat coming.

Q. Did that other boat subsequently turn out to be the Strathalbyn? A. It did.

Q. Now, did you hear the Flyer and Strathalbyn exchange passing signals? A. I did.

Q. With respect to the passing signals between the Strathalbyn and the Flyer, when did you observe the Strathalbyn?

A. Oh, probably four or five minutes before they whistled to each other.

Q. What did you observe on the Strathalbyn at that time?

A. Well, when we first noticed the Strathalbyn we

noticed the—there were two red lights on her left-hand side and a green light, and we knew one of them must be——

MR. BOGLE: Mr. Beaumont, in testifying to “we,” who do you mean, yourself? You only know what you saw. Now, you are testifying; just tell what you saw.

A. Well, I was just using that because there were several of us there.

Q. Well, just——

A. I saw the two red lights and the green light to the left and forward of the *Flyer*, that is, in front of us a little to the left; one of the red lights almost on a direct line with the *Flyer*, and the red and the green light a ways off to the left. This I knew to be a boat, the red and green light. Of course, I didn’t know at that time what boat it was, but I noticed—I knew it was a boat on account of the red and green light showing up.

MR. HAYDEN: Q. Did you see any other lights on the steamer at that time except the red and green light?

A. The forward masthead light,—white light.

Q. Did you observe those lights as they were approaching the *Flyer* until the whistle?

MR. BOGLE: Don’t lead this witness; just ask him what he saw.

MR. HAYDEN: Q. Well, go ahead, Mr. Beaumont, and tell what you saw, up to the time of the collision, if you saw the collision; tell it in your own way?

A. Well, I noticed this boat afterwards proved to be the *Strathalbyn* coming towards us and I noticed this red and green light. Of course, I was not looking at it continuously, but I noticed we were drawing closer together as I kept looking up at this approaching boat. When he blew—when the *Strathalbyn* blew one whistle, which was answered by the *Flyer*, the only light I could see then was the red light and the white masthead light. As this boat got down off our——

Q. Which boat do you mean?

A. I will call it the *Strathalbyn*; at that time I didn’t know what boat it was. But the *Strathalbyn* as



she got down to a point off our left-hand bow, she whistled again, one whistle. This I knew was for the boat we just passed, or for the Virginian. I looked around to see what course the Virginian was taking, and I noticed the Virginian's red and green lights. As the Strathalbyn passed us and got to our stern and off the left, she blew again, and still I could hear no answer. I looked again down where the Virginian was coming and I was wondering why she did not answer. I will explain here——

MR. BOGLE: Just tell what you saw, Mr. Beaumont; that is all we want.

MR. HAYDEN: Go ahead in your own way.

A. My reason for knowing these things was on account of my experience in the government service.

MR. BOGLE: I object to that.

MR. HAYDEN: Make any objection you have as to the materiality of it.

THE WITNESS: I am simply stating why I noticed them.

MR. BOGLE: The fact you noticed that is all that is necessary. I object to the witness going into any deductions as to the reasons why he continued to notice them.

MR. HAYDEN: Q. Go ahead and tell what you know?

A. My reason for knowing this myself was on account of the experience I had, and I remember at the time we had called men in——

MR. BOGLE: I object to that as immaterial and not proper upon this case.

MR. HAYDEN: Go ahead.

A. We had called men in several times on account of not answering whistle signals properly, and I noticed the Virginian did not answer this signal. Then when I looked down the green light—or the red light on the Virginian had disappeared and only the green light was in sight. The Strathalbyn then blew five whistles, and the next thing we heard was the crash.

Q. Did you notice the red and the green lights on the Strathalbyn when you looked back after the—upon

the whistling or about the time of the whistling from the Strathalbyn, which was after the Flyer and the Strathalbyn had exchanged their signals?

A. Yes, sir.

Q. Did you notice that light—see those lights on the Virginian at or about the time the Strathalbyn blew the second blast,—passing blast, to the Virginian?

A. When the Strathalbyn blew the second blast and I looked back, I only noticed the one light, the green light.

Q. About how far away from you would you say the Strathalbyn passed you, and on what side of the Flyer?

A. She was on the—to the left of the Flyer.

Q. And about how far away?

A. Oh, I should imagine about three-quarters of a mile.

Q. That is, the boats, when they were opposite each other were three-quarters of a mile apart?

A. That is pretty hard to say, from half to three-quarters of a mile; they were no ways close.

Q. About how far apart would you say they were when the Flyer and the Strathalbyn blew their passing whistles to each other; that is, I mean the distance that the Strathalbyn was away from the Flyer?

A. Oh, pretty close to a mile apart.

Q. About how far was the Flyer from the Strathalbyn and the Virginian at the time the Strathalbyn and the Virginian collided?

A. How far away was the Flyer?

Q. Yes.

A. Oh, I imagine they were pretty close to a mile away—that the Flyer was pretty close to a mile away from the two boats when they hit.

Q. As the Strathalbyn was approaching the Flyer, how did the lights on the Strathalbyn appear as to their—appear to be burning?

A. Well, they were good bright lights; I would say they were electric lights.

Q. Did those lights flare up and down, or did they burn steadily? A. No, sir, very steadily.

Q. Did you have any difficulty in determining that they were ship's lights? A. Not at all.

Q. What did the Flyer do after the two vessels came together?

A. She swung around in a big circle and went to where the collision had taken place.

Q. Which way did she swing? A. To the left.

Q. Did you observe any lights on the Strathalbyn as the Flyer was approaching her on that swing?

A. I saw her one side light and the—and her mast-head light.

Q. What side light did you see?

A. The one on the right-hand side, the green light, I understood, of the Strathalbyn.

Q. How did that light appear to be burning?

A. Just like the rest of them, bright, steady.

Q. What did the Flyer do when she came up to the Strathalbyn?

A. She just pulled up in there, and the captain called to the Strathalbyn,—I forget his exact words,—but he wanted to know if they needed assistance, needed any help.

Q. What was the answer, if you remember?

A. Why, something about the captain did not know whether he did or not, whoever called back didn't know whether they needed any help or not, hadn't time yet to find out.

Q. Where did the Flyer go after this conversation with the Strathalbyn?

A. Swung around to the—went around to the stern of the Strathalbyn and came up along side the Virginian, the other boat.

Q. Did they have any conversation with the Virginian?

A. About the same—the captain of the Flyer called to the Virginian to see if they needed any help.

Q. Then after calling to the Virginian, what did the Flyer do?

A. Why, went back to the Strathalbyn.

Q. Then, what did she do, when she got back to the Strathalbyn?

A. Well, there was considerable talking back and forth there, and finally we swung around and came on to Tacoma; found out there was no immediate assistance needed.

Q. After you swung around coming to Tacoma, did you pay any attention to the lights on the Strathalbyn?

A. No, I did not take any particular pains to see what lights were burning, there had been no changes, they were all about the same.

Q. After the Strathalbyn had passed the Flyer and had blown the second whistle to the Virginian, did you make any conclusion as to the navigation of either or both boats?

MR. BOGLE: I object to that; he has not qualified as a navigating expert; it is a conclusion by him, and has no bearing on this case.

A. I did, when I looked back and saw what looked to me like the Virginian swinging across the course of the Strathalbyn, I made the remark that the pilot evidently was lost.

MR. BOGLE: I object to that as immaterial.

A. I am speaking of the remark I made.

MR. BOGLE: I object to that as being incompetent, irrelevant and immaterial.

MR. HAYDEN: What remark did you make?

A. That the pilot evidently was lost or drunk.

Q. The pilot on what boat?

A. The pilot on the boat that was headed the same way we were, to Tacoma.

Q. As you approached the Strathalbyn did you see anything about her lights that created any suspicion in your mind that they were not all right? A. No, sir.

#### CROSS-EXAMINATION.

(BY MR. BOGLE.)

Q. How long were you in the custom service, Mr. Beaumont? A. About four years.

Q. How long ago was that?

A. I left the custom service in 1907.

Q. Where were you stationed in the custom service? A. Morgan City, Louisiana.

Q. Morgan City, Louisiana? A. Yes, sir.

Q. That is a seaport, is it? A. Yes, sir.

Q. What were your duties in the custom service?

A. I was an inspector; we inspected all boats that came in there, saw to it that the boats that made that port, or our home ports, complied with the rules and regulations as to equipment, papers, licenses.

Q. Was it a part of your duties to examine and ascertain whether the lights were properly fixed?

A. Certainly, being equipment.

Q. Did you as such inspector give papers or anything to vessels coming in there to the effect that after such examination that their lights were properly fixed?

A. No, sir.

Q. If you found the lights were not properly fixed, what did you do?

A. Well, it was very seldom we found a boat whose lights were not properly fixed. In case we did, we would just call it to their mind that they would have to use what was right; that they complied to all the rules regarding equipment, life preservers, life rafts and fire apparatus.

Q. It was a part of your duties to see that the lights were right and to pass upon them?

A. No more to see that the lights were right than any other part of the equipment which applied to all equipment in general.

Q. It was a part of your duties? A. Yes, sir.

Q. If the lights were not properly fixed you condemned them, would you?

A. Called their attention to the fact that they were not carrying proper lights, or that their lights could not be seen. Sometimes we got a report of a boat carrying lights that were dim, that could not be seen, and that boat would be cautioned.

Q. What remedy would you have if the lights were not properly fixed?

A. Tie up a boat if it did not have lights properly fixed.

Q. That was within your duties, was it?

A. We were permitted to do that. Sometimes we would tie up a boat if it did not have the proper number of life preservers and if it did not have proper papers.



Q. You were engaged four years at Morgan City?

A. Yes, sir.

Q. Why did you quit the custom service?

A. Wasn't enough money in it; I could make more money in other business.

Q. You quit voluntarily, did you?

A. Yes, resigned.

Q. Have you had any experience in shipping?

A. Yes, sir.

Q. Prior to that time? A. Yes, sir.

Q. What has been your experience prior to going into the custom service?

A. Had charge of a line of boats that was doing towing business for us, the oil company I was connected with.

Q. Towing business?

A. Ocean going tugs and ocean going steamers that brought in oil to us.

Q. You were the general manager of that concern, were you?

A. I was, in that section, yes; not general manager, I was local manager.

Q. Have you had any particular experience in shipping? Have you ever been a seafaring man?

A. I had a license as an engineer.

Q. Have you had any navigating experience?

A. None, only around the port there.

Q. Ever had a master's or pilot's papers?

A. No, sir.

Q. Have you ever been connected with the American Trading Company? A. No, sir.

Q. Do you know their manager here, Mr. Macquarrie? A. I do not.

Q. Upon leaving Seattle, you were sitting at the forward end of the cabin, inside or outside?

A. Outside.

Q. Where does that bench run around, in front of the pilot house? A. Right around the front cabin.

Q. That is in front of the—where the pilot house — A. That is the pilot house is up overhead.

Q. On the port side? A. Left-hand side, yes.

Q. That is the port side, isn't it? A. Port side.

Q. Do you know what time you passed Pulley Point on that night?

A. Pulley Point? I don't know the different Points along there, between here and Seattle.

Q. When did you first see the Virginian?

A. As we came up along side her.

Q. Was that the first time you had seen her?

A. Yes, sir.

Q. Was your view obscured from the point directly ahead from where you were seated? A. How is that?

Q. Was your view obscured in any way from a point ahead of the Flyer? A. No, sir.

Q. You did not notice the Virginian prior to the time you were up along side her? A. No, sir.

Q. Could not see her stern light burning?

A. Did not take any notice of that.

Q. When did you first see the light on Pulley Point, Pulley Point being the Point about where you passed the Virginian?

A. I did not notice the light on Pulley Point.

Q. At the time you first noticed the Virginian, was the Flyer passing across the Virginian astern, or was she along side of her?

A. Well, I could show that better with a pencil. Well, I can show it right here (illustrating with hands on table). We were coming, for instance, in this direction, and the Virginian seemed to be kind of pointed that way, towards us. We were not running parallel, we were not running just exactly along side each other.

Q. I did not quite get the idea?

A. Your question was about our passing her astern; we did not pass her astern.

Q. Did you notice a Point about where you passed the Virginian; did you notice any point in there (indicating)?

A. No, I did not take particular notice that night.

Q. I wish you would show me, Mr. Beaumont, about how you passed the Virginian, taking this paper, and that this is the general northerly course towards Seattle, the opposite end is the southerly course towards Tacoma.

A. Well, we were coming along (drawing) like this, the Flyer and the—we were over here further (indicating on drawing).

Q. You can just locate that by a line.

A. Like we were coming here (indicating), and the Virginian seemed to be ahead in this direction (indicating).

Q. Was that at the time you were passing her?

A. That is when we passed her.

Q. What course did the—just mark those two, the Virginian and the Flyer?

(Witness marks as requested.)

Q. What course did the Flyer take after passing the Virginian? Did she take on that same course?

A. As she passed the Virginian she kind of had swung to give the Virginian a wide berth,—she had kind of swung off to the right, to her right.

Q. Well, then, is this arrow here which you have marked the Flyer, her position as she passed the Virginian, is that, off to the right?

A. Well, yes, but she had swung off to the right and come around this way, and swung right back in again.

Q. I want her position in passing the Virginian and after she passed the Virginian?

A. The Flyer was coming along, and as she went by the Virginian (drawing course of vessel) and kept ahead right across.

Q. Mark the Flyer there.

(Witness marks Flyer.)

Q. Now, how far did the Flyer pass off from the Virginian—how far off?

A. Oh, I imagine from a quarter to half a mile, it is pretty hard to tell at night what the positions were.

Q. Had the Flyer passed the Virginian at the time you saw these three lights ahead, two red and one green?

A. I did not notice those lights until we had got on around past the Virginian.

Q. How far past the Virginian?

A. Probably half to three-quarters of a mile.

Q. Half to three-quarters of a mile? A. Yes, sir.

Q. About how many minutes, do you know?

A. Oh, it would be three or four minutes.

Q. Three or four minutes after you passed the Virginian? A. Yes, sir.

Q. Then, you were on this course which you have marked here with the dotted line?

(No answer.)

Q. This identification, the arrow and dark line show the position of the two vessels at the time of passing, and shortly after they had passed? A. Yes, sir.

Q. And the break in the dotted line shows the change in curve of the Flyer upon passing the Virginian—this break that commences where I put an "X"?

A. I could not tell exactly; she swung out.

Q. She swung out to the right?

A. Yes, sir, she swung out to the right.

Q. It is your opinion that after she swung out to the right and cleared the Virginian she straightened back on her same course again? A. Yes, sir.

Q. Was that prior to the time she had whistled to the Strathalbyn when she straightened to continue on her course? A. Yes, sir.

Q. She continued on that course, did she?

A. Till after we passed the Strathalbyn, yes.

Q. Until after you had passed the Strathalbyn. Then, on that course, as I understand your testimony?

A. Yes, sir.

Q. One bright red light was directly ahead of you?

A. Yes, sir.

Q. That would be at a position directly ahead of this dotted line with an arrow pointed at the head of it?

A. Yes, the red light would be a little bit to the left of the course we were taking. For instance, we were going this way (indicating on drawing), and all lights were a little bit to the left. I was looking straight ahead from the port side of the Flyer and could see all three of those lights.

Q. All three of those lights? A. Yes, sir.

Q. Did you think that one of them was a light upon a point of land? A. I know that one of them was.

Q. Which light was that?

A. The red light that was by itself.

Q. Was that the one most directly ahead of you?

A. That was the one. There was a light between the red and green light and the Flyer.

Q. What was that? A. That was the point light.

Q. How was that point——

A. The point light and the red and green light.

MR. HAYDEN: Right on that point write "Red and green light."

MR. BOGLE: Just mark that—that is red light?

A. That is red light.

MR. HAYDEN: This is what is referred to as the "point light" (indicating on paper)?

A. That is the point light.

MR. HAYDEN: Mark it "Point light."

(Witness marks as requested.)

Q. And the other lights you marked "Red and green"?

A. The red and green were moving, and the red light was stationary.

MR. BOGLE: Q. Now, this red light which you picked up, the point light was almost directly ahead and slightly on your port bow, was it?

A. Yes, almost directly ahead.

Q. You are not familiar with the points and the lights between here and Seattle? A. No, sir.

Q. Between here and Seattle? A. Not now.

Q. How did you happen to distinguish that as a point on land?

A. Well, it was a stationary light.

Q. A stationary light? A. Yes, stationary light.

Q. You could see those other lights moving?

A. They were moving, coming towards us.

Q. How far were those other two lights on your port bow? A. How far?

Q. How many degrees or points were they on your port bow, the red and green?

A. As I first saw them they were just a little bit to the port,—port side.

Q. Then, they were almost in line with this stationary red light?

A. They were a little to the left of that; the stationary light was between these lights and the Flyer.

Q. But as you were looking ahead, how much were



those two lights off of your port bow? Do you know the different points on the compass, I mean the degrees and points? A. No.

Q. What would you say the angle would be between the course of the Flyer——

A. When I first saw these?

Q. When you first saw those lights?

A. Well, here is the (drawing); that is our course.

Q. "A" to "B" is a continuation of the course of the Flyer? A. Yes, sir.

Q. All right.

A. They were just about as I have them placed here when I first saw them.

Q. They were just about at the angle indicated here by the mark "Y," were they? A. Just about.

Q. Did you see any other steamers in that vicinity, Mr. Beaumont, at that time? A. When we were here?

Q. Yes, after you passed the Virginian up to the time of the collision, did you see any other steamers,—any other lights ahead of you? A. No, sir.

Q. Now, you had passed the Virginian some four or five minutes, did you say, at the time you saw these lights?

A. Something,—probably four or five minutes.

Q. How far did you say you were ahead of the Virginian at that time?

A. I imagine half or three-quarters of a mile.

Q. And how far would you judge those lights were ahead of you when you first saw them?

A. Oh, that is pretty hard to say; it is so hard to tell distances at night especially, but from the time it took us to come together I should think we were a mile and a half, pretty near, I would say that.

Q. How long did it take you to come together?

A. From the time we first saw the red land lights?

Q. Yes, sir.

A. We passed probably six or seven minutes, five or six or seven minutes, somewhere along there, six or seven minutes I would say.

Q. How long did you watch those red and green lights which you took to be on the steamer?

A. Well, I did not watch them, I just noticed that

they were—there was another boat coming and in—as I kept looking up I noticed that she was still headed towards us. The green light disappeared, but the red light still stayed.

Q. When did the green light disappear?

A. Shortly after I first saw them.

Q. Shortly after you saw the two lights the green light disappeared? A. Yes, sir.

Q. About how long after you first saw it?

A. That is pretty hard to say; I was not taking notes on it.

Q. About how long before you passed the Strathalbyn? A. Oh, I imagine four or five minutes.

Q. Did you watch that green light, pay any particular attention to it, after you first saw it?

A. No, sir. If I remember correctly, the second time I looked there was just the red light in sight.

Q. How far apart did you say the Flyer and the Strathalbyn passed?

A. Half or three-quarters of a mile, I would say.

Q. Did you notice the Strathalbyn changed her course after you saw the red and green lights, on what you took to be the Strathalbyn? A. No, sir.

Q. Do you think she changed her course any?

A. I could not say.

Q. Did you notice any variation in the bearing of either the red light or masthead light from the time you first picked them up? A. Not at all.

Q. They did not get any broader on your port bow?

A. No.

MR. HAYDEN: From what time do you mean?

MR. BOGLE: He says from the time he first picked them up,—first saw them.

MR. HAYDEN: Until what time?

MR. BOGLE: Any time, I asked him.

Q. What was the position, Mr. Beaumont, of the Flyer to the Strathalbyn at the time they exchanged whistles?

A. Why, the Strathalbyn was passing on our port,—port side.

MR. BOGLE: I want to introduce this in evidence. Thereupon, said paper was marked "Claimant's

Exhibit, Beaumont No. 1," and attached to this deposition.

Q. How far away was she ahead of you and on your port side when——

A. Oh, I should say about a quarter to a half, three-quarters of a mile, somewheres along there.

Q. Was this when the Flyer and Strathalbyn exchanged signals? A. When they exchanged signals.

Q. That was about four or five minutes after you first saw these lights, was it, at the time you could see her red and masthead light? A. Yes, sir.

Q. Did you see her head light as you passed along side her? A. Yes, sir.

Q. When did that red light shut out?

A. Not until after she had passed us.

Q. Didn't cut out until after she had passed?

A. No, sir.

Q. Could you see the masthead light after she had passed? A. No, sir.

Q. After she had passed your beam? A. No, sir.

Q. Could you see any lights on her after she had passed your beam, astern of you?

A. I could see the stern light.

Q. You could see the stern light?

A. Yes, sir, I could see the stern light.

Q. Now, where was the Strathalbyn at the time she gave her second whistle which you took to be to this approaching steamer? A. Right off of our port bow.

Q. How far ahead of you?

A. Oh—you mean how far would she be directly ahead?

Q. Yes. A. Oh, hardly—about a quarter of a mile.

Q. That is, a quarter of a mile on a point directly ahead and off your port bow?

A. Yes, sir,—well, she was—she was about half a mile off away from us, but what I saw was about—oh, it is pretty hard to tell, she was just off to our left, just about on that angle (indicating).

Q. An angle of about how much,—how many degrees would you say? A. Oh, darned if I know.

MR. HAYDEN: Maybe you could indicate it on this exhibit. Get up where your Flyer is.

A. I have the Flyer marked from "E," showing the Flyer up here (indicating on Claimant's Ex. Beaumont No. 1).

MR. HAYDEN: That is what I mean.

MR. BOGLE: Mark that "Flyer 2," to indicate the two positions.

MR. HAYDEN: Where she was when you saw the—— (interrupted.)

THE WITNESS: Just about in that position (indicating).

MR. HAYDEN: (continuing) when you saw the Robinson Point light and the red and green light referred to earlier in the testimony, with the lines indicated by "A" and "B" from "Flyer 2," to the Point light?

MR. BOGLE: Yes, that is where she was when you saw the two red and one green light ahead of you.

Q. The angle "Y-2" was the angle between the Flyer and the Strathalbyn at the time she gave her second whistle, which you took to be her first whistle to the approaching steamer? A. Yes, sir.

Q. At that time you looked back, Mr. Beaumont?

A. That is when I looked back.

Q. And you could see what on the Virginian?

A. The red and the green lights.

Q. Did you notice her masthead and range lights?

A. Didn't notice them.

Q. And she was how far astern of you then?

A. About—oh, I imagine about half or three-quarters of a mile.

Q. She was apparently on the same course she was on when you passed her?

A. Seemed to be, yes, sir.

Q. You are sure you looked back at that time?

A. That is what caused me to look back.

Q. Where was the Strathalbyn when she gave her third passing whistle? Did you pick up her second whistle to this approaching steamer? Was she astern of you? A. Yes, astern of us.

Q. How much time elapsed between those two whistles? A. Oh, probably a couple of minutes.

Q. At that time you looked back and could only see the green light on the——

A. I was still looking back; the red light disappeared.

Q. That was at the time of the second passing. Did you hear any further passing whistle blown by the Strathalbyn?

A. Any further passing whistles? No, sir.

Q. You only heard the two passing whistles to this other steamer? A. I heard the two passing whistles.

Q. That is all? A. That is all.

Q. And the next whistle you heard was what, Mr. Beaumont?

A. I heard five short blasts from the boat that had just passed us, the Strathalbyn.

Q. All of those blasts were from that one boat, were they; could you tell? A. Yes, sir.

Q. Did you hear any whistles at all from the Virginian? A. No, sir.

Q. Didn't hear her blow three whistles in response to those whistles from the Strathalbyn? A. No, sir.

Q. How long after this second whistle which the Strathalbyn blew this approaching steamer was it before you heard her blow those five blasts?

A. It was not over a minute or a minute and a half.

Q. Minute and a half? A. Minute and a half.

Q. And the two steamers were then about how far astern of you?

A. Oh, I should imagine when she blew her five blasts the Strathalbyn was——

Q. Did you look back then?

A. I was looking back all this time, from the time she blew her first passing whistle to the boat, the Virginian. I was watching the lights on the Virginian.

Q. You did not watch the Virginian's range and masthead light?

A. Noticed them when they swung around.

Q. You did notice them swing around, did you?

A. When they swung around.

Q. Prior to the collision? A. Yes, sir.

Q. When did you notice the Virginian's masthead and range lights swing around?



A. After the Strathalbyn had blown her second—no, between the first and second whistles she seemed to swing around, and after she had blown her second whistles she seemed to swing clear around.

Q. Clear around so that she was headed where?

A. Headed——

MR. HAYDEN: Draw on there and give an idea of it.

A. We were coming along this direction (indicating on Beaumont's Ex. No. 1). This is just my idea of it. Here is a red light and here is the green (indicating). Here are the two lights. She swung around and this light disappeared and only the green light showed and the two range lights.

Q. You say now that you noticed the two range lights?

A. When she swung around. You asked me if I had noticed them up to this time.

Q. All right, if that is your idea. Did you notice them when she swung around?

A. I noticed them when she swung around.

Q. When did she swing around?

A. About the time the Strathalbyn blew her second whistle,—passing whistle.

Q. That is the time you noticed the red light was shut out, isn't it? A. Yes, sir.

Q. You noticed the range lights at the same time?

A. They squared up opposite one another.

Q. You noticed that at the time of the Strathalbyn's second whistle? A. About at that time.

Q. Did they keep on swinging around?

A. No, they seemed to be right in that position.

Q. After they swung around, she seemed to continue on that course, did she? After her red light was shut out? A. Stayed right in that position.

Q. You didn't notice them swing any more, did you? A. No, sir.

Q. Could you tell how far they swung,—how far they were swinging?

A. Oh, no, I could not tell that now.

Q. How did they open up?

A. I did not even know she had swung, that was

my supposition that she had swung, because the green light disappeared and the red light was there and then two white lights swung into line.

Q. Did you look back and see they had changed positions? A. No, I saw they had changed positions.

Q. You are sure that was not until the Strathalbyn's second whistle? A. Yes, about that.

Q. Second whistle to the Virginian?

A. Virginian.

Q. That was how long before the collision?

A. Oh, probably two or three minutes.

Q. Two or three minutes. Now, she swung on to this curve. Indicate as near as you can the course she swung on it.

(Witness indicates on drawing, Claimant's Exhibit, Beaumont No. 1.)

Q. That is this dotted line? A. Yes, sir.

Q. She continued on that course, did she?

A. Swung into that course.

Q. As you watched her did they broaden out any, become more parallel?

A. No, stayed about the same.

Q. Now, just indicate on this drawing of yours where it appeared to you the collision took place?

A. Where it appeared to me the collision took place?

Q. Yes.

(Witness indicates by drawing dotted line.)

Q. Mark the point of collision?

A. There (indicating on drawing.)

Q. Write off there "Point of collision".

(Witness does as requested.)

Q. Ten, according to that, the collision took place almost at the point where she changed her course, didn't it? A. Pretty close to it.

Q. Did you watch the Strathalbyn after she had passed you?

A. No, I cannot say that I did, just casually, probably noticed—I was watching both of them, for that matter.

Q. Were you paying any more attention to the Virginian than you were to the Strathalbyn? A. Yes, sir.

Q. Was that because you could see her better?

A. No, more because of her movements.

Q. You did not watch the Strathalbyn at all then, did you?

A. I say, only casually; I was watching both boats.

Q. Did the Strathalbyn change her course any after she passed you, that you could see?

A. That is hard to say, I could only see her stern lights. You could tell that either boats were changing on account of the way their lights were moving; you could tell the Virginian changed her course on account of the red light disappearing and the green light showing and two range lights ranging up.

Q. You have had some seafaring experience, Mr. Beaumont, have you? A. Just as I have stated.

Q. What if the Flyer so changed her course and drew away from the Virginian at all times, wouldn't that make an apparent change in the Virginian's course? Wouldn't that make the bearing of her lights different?

A. If the Flyer had changed her course?

Q. If the Flyer was bearing away from the Virginian at all times?

A. Well, it depends on which way she was bearing away from her. If she was varying away from her straight ahead, the lights on the Virginian would remain the same.

Q. If she was bearing further to the right, and the Virginian was coming more direct, straight ahead course, and there was an angle between the two courses—

MR. HAYDEN: I object to that question on the ground that there is no testimony to support it.

A. I didn't quite get that. If the Flyer was pulling off to the right, you mean, would the lights on the Virginian change?

Q. If one vessel was going say in a straight northerly course and the other vessel going in the same direction but on a course further off to her right, and the vessel bearing off to the right has greater speed, wouldn't that make the bearing of the other vessel's lights change, varying from time to time? A. I presume it would.

Q. Now, you don't know whether the Flyer so

changed her course and the Virginian so changed her course, do you? It was just the apparent change in the lights was all, wasn't it?

A. We had already picked up the lights ahead on this point, these stationary lights, and we were keeping right in line with them, so we could not vary away to the right.

Q. If the Virginian was going more on a course down the Sound and passing further off the Point,—further off Point Robinson than you were headed for,—the relative bearing of your two courses would be changed at all times, wouldn't they?

A. No, they would not be changed; if we were diverging out like this, they would be.

Q. That is what I mean. If the two courses were diverging from each other?

A. Oh, if both were headed for the same point and making different lines, same course, the lights would not change.

Q. You mean if you were on parallel lines?

A. If on parallel lines.

Q. But if you were not on parallel lines?

A. If we were not I should think the lines would be changing.

Q. Mr. Beaumont, which vessel blew the first passing whistle, the Flyer or Strathalbyn?

A. The Strathalbyn.

Q. You are positive of that, are you?

A. I am pretty sure of it.

Q. This collision took place a little over two years ago, didn't it, in January, 1912? A. Yes, sir.

Q. Have you been residing in this vicinity ever since then? A. In Seattle.

Q. In Seattle. You think your recollection is as clear now as it was immediately after the collision, of all these facts?

A. The principal facts of it are something you could not forget five years from now.

Q. Just as clear five years from now?

A. Yes, anything happening like that would be just as clear five years from now.

Q. Did these lights appear at all times,—these lights you say appeared to be port side lights?

A. Yes, sir.

Q. Would you take them to be electric lights?

A. Yes, I would.

Q. You think that no navigator would have any trouble in making out those lights in seeing them?

A. I would not think so.

Q. You think you could see the port light and also the green light a mile and a quarter away?

A. I think it was about that distance I did see them.

Q. You saw no other steamer in that vicinity at all?

A. No, sir.

Q. Now, Mr. Beaumont, after the collision,—first, at the time of the collision, how far was the *Flyer* from this steady red light ahead of you?

A. The steady red light?

Q. That you took to be a light on land, — point light? A. I don't know how far we were from that.

Q. Did you notice it at that time? Did you notice the bearing of that light?

A. I did not pay much attention to that after the *Strathalbyn* had passed us; but after she first whistled for the *Virginian*, I was looking back all the time.

Q. You did not look forward? A. No, sir.

Q. Did the *Flyer* turn an apparently sharp turn to the left in order to go back to the collision?

A. No, she swung around.

Q. How wide an arch did she swing?

A. Oh, she swung around so that she came up on the starboard side of the *Strathalbyn*.

Q. Was she swinging up to the time she reached the *Strathalbyn*, or had she completed her swinging and straightened out on her course?

A. She seemed to make a big circle right up to the *Strathalbyn*.

Q. Well, what I mean is, had she completed that circle and straightened out on her course?

A. Well, she came around here and came up along side the *Strathalbyn*.

Q. You don't know how much of a circle she made, —how wide a circle? A. I could not say.



Q. How did the two vessels bear from the Flyer at the time of the collision, what angle off her stern?

A. Strathalbyn here—this is the Strathalbyn (indicating on drawing), and the Virginian seemed to be in this position (indicating), and we came up along side the Strathalbyn and around here along side of the Strathalbyn (indicating on drawing.)

Q. This line, dotted line E-F, then, is the course of the Flyer after the collision?

A. We swung around in that direction.

Q. Of course, the Flyer was further ahead than—

A. Yes, sir.

Q. What I want to get at is the bearing at the time of the collision,—bearing of the Flyer and the two vessels astern of you?

A. I thought you meant up there (indicating on drawing).

Q. Were they almost directly astern of you or were they to either side?

A. They were to the stern and off to our left a little bit.

Q. They were off—

A. Off our port side and to the stern.

Q. Well, now, was she very much off there? Were they well astern or well off?

A. Oh, they were pretty well astern, not so very far off. I was standing looking—if this is facing the stern of the Flyer (illustrating), I would be looking off at about the corner of that book-case.

Q. Would you take that to be an angle of about 15 or 20 degrees? A. Something like that.

Q. What lights could you see at that time plainly?

A. You mean when they hit?

Q. Yes.

A. That is hard to say, I was not paying much attention to the lights when they hit.

Q. You made this swing to the left on the Flyer and approached the Strathalbyn on her starboard side?

A. On her starboard side.

Q. How was she laying then with reference to the land? A. Why,—

MR. HAYDEN: Which one?

MR. BOGLE: Strathalbyn.

A. I could not say—I could not say. We came up and we were just watching the wreck and was not taking any particular note of direction.

Q. You came up to her—

A. On her starboard. We swung to the left and came up on her starboard side.

Q. Did you approach her from the stern or directly towards her starboard?

A. From—oh, I suppose we came up on an angle of probably 15 or 20 degrees.

Q. Approaching her from the stern?

A. Yes; made that swing around a little more, I could not say.

Q. How was the Virginian laying at that time with reference to the position of the Strathalbyn?

A. Well, the Virginian was lying kind of—her stern was headed away from the port side of the Strathalbyn. What I mean, the Strathalbyn was lying this way (indicating); the Virginian was kind of laying off this way (indicating).

Q. How were the two bows of the vessels lying with reference to each other?

A. Well, the Strathalbyn seemed to overlap the Virginian.

Q. Were they still lying towards each other?

A. Well, they were lying—this is the Strathalbyn and this is the Virginian (indicating with hands). They were in that position.

Q. Taking it with reference to this being Pulley Point—I do not mean as to distance but I mean as to direction—this being a general northerly direction, I do not mean exactly.

A. I got it right here now; this is the position they were in about (indicating on drawing).

Q. Over on the right-hand side of that, note the position of the two vessels at the time you came along. Put them down here and then you may mark them?

A. Here is the Strathalbyn here (indicating on drawing), and the Virginian seemed to be kind of in this position (witness indicating by drawing on Exhibit).

Q. Headed this way, were they (indicating on drawing)? A. Yes, sir.

Q. Was the Virginian's bow right on the Strathalbyn at that time?

A. We could not see as we came along side; we came up on this side of the Strathalbyn, this way (indicating on drawing).

MR. HAYDEN: Name them, "Strathalbyn" and "Virginian" so that we will know.

(Witness marks on drawing as requested.)

MR. HAYDEN: Let us mark that with the figure "P," to indicate that is the figure that indicates the—

MR. BOGLE: Put a circle around it.

MR. HAYDEN: With figure "P" their position when the Flyer came up, as you recollect it.

MR. BOGLE: Do you mean the two vessels were as close together as you have indicated them here? In other words, were they touching at the time you came along?

A. I could not say as to that. We came up on this side of the Strathalbyn (indicating on drawing).

Q. You do not know which direction the Strathalbyn was pointing at that time?

A. Yes, the Strathalbyn was pointing this way (indicating on drawing).

Q. Was she bound in the same direction she was at the time of the collision?

A. As near as I could say she was; she made that swing somewhat. We didn't pay much attention to direction at the time.

Q. Where was the Virginian at the time you left the Strathalbyn and went to the Virginian?

A. She was on this side (indicating on drawing).

Q. As close to the Strathalbyn as you have indicated there? A. When we got around to her?

Q. Yes.

A. No, I don't think she was. I think she had pulled back some. While navigating I know they both backed—the Strathalbyn had backed off before we started to come over to the Virginian.

Q. You think the Strathalbyn was still headed practically on her course towards the north?

A. Yes, I think she was, I could not say, though.

Q. Did you notice any point of land at that time to determine? A. No.

Q. And you do not mean to say that the two vessels were touching at the time you came up there, as indicated in this diagram of yours?

MR. HAYDEN: I think he has answered that three or four times.

MR. BOGLE: Let him answer again.

A. That they touched?

Q. Yes. A. I cannot say.

Q. You have indicated they were touching?

A. This is the position they were in; I could not tell whether they were touching or not.

Q. What was their relative position at the time you saw both vessels?

A. Just as I have indicated them out here.

Q. That close together, were they?

A. Just about that close together.

Q. Touching at the time you saw both vessels?

A. I would say so.

Q. How long was this after the collision?

A. How is that?

Q. How long was this after the collision?

A. Well, just as long as it took us to swing around and come up along side the Strathalbyn.

Q. Was it five minutes?

A. No, I don't think it was,—probably three or four minutes, maybe five minutes.

Q. At that time the Virginian was off from the Strathalbyn's port side, wasn't she?

A. From the Strathalbyn's port side.

Q. Did you notice any lights over the bow of the Virginian at the time you went along side of her?

A. When we came around?

Q. Yes.

A. No, I didn't pay much attention to that.

Q. How was the Strathalbyn headed at the time the Flyer left her and proceeded on her voyage to Tacoma? Was she still headed in that direction, or had she changed any?

A. The only change she made probably was to swing around.

Q. Had she or had she not swung around?

A. Oh, I could not say.

Q. Did you pay any particular attention to the Strathalbyn after you had—after the Flyer had left her and continued on her voyage to Tacoma.

A. No, sir.

Q. After going to the Virginian and returning to the Strathalbyn, did you return to her starboard side again?

A. How is that?

Q. After the collision you went up along side the Strathalbyn on her starboard side, didn't you?

A. Yes, sir.

Q. After speaking to the Strathalbyn you pulled ahead of her, didn't you? A. No, sir.

Q. Did you back around the stern?

A. We went around her.

Q. You backed off and went around her port side?

A. No, went to the Virginia.

Q. In going to the Virginian, did you cross her bow, the Strathalbyn?

A. No, sir, we backed off and went around and came around.

Q. Went up on the port side of the Strathalbyn?

A. We backed off and came around up to the starboard side of the Virginian.

Q. After coming up on the starboard side of the Strathalbyn, how did you maneuver in order to get to the Virginian? A. We went around the Virginian.

Q. And came up on the port side of the Strathalbyn?

A. We came up to the Virginian.

Q. That is on the port side?

A. We did not pull up on the port side.

Q. You backed up and approached the Virginian on her starboard? A. Yes, sir.

Q. After speaking to the Virginian you backed off again, did you? And did what?

A. Well, backed off, and I think we headed towards Tacoma, and as we went along side the Strathalbyn, or as she went over this way they exchanged some more



remarks, or somebody on the Strathalbyn said they were all right—I don't know just the exact wording or what was said.

Q. I was just trying to get your maneuvers?

A. I see.

Q. You backed off and started towards Tacoma, and then you were on the port side of the Strathalbyn, were you?

A. I don't know, it seems to me that we went back around on the Strathalbyn again.

Q. Now, during these maneuvers was the Strathalbyn moving or was she remaining stationary in the water?

A. I don't know whether she shut down her engines or not. She had them backing.

Q. Did you notice any change in her course from the time you came along side until you left her?

A. No, sir.

Q. Was she headed about the same way she was?

A. Yes, as far as I know.

Q. The Virginian, I understood you to say, was pulling off, backing? A. No, sir.

Q. She did not back off there?

A. We were all right there in a group.

Q. I say, while you were there did the Virginian change her course any? A. Not that I know of.

Q. Was she laying still in the water?

A. Apparently so.

Q. All the vessels were right up together?

A. They had backed away from each other.

Q. They did that after you came up?

A. When we got there they were backing away from each other.

Q. They were not right up together the way you have indicated there?

A. When we came up along side, as far as I could see, they were—they were close together; I could not say they were touching.

Q. Within a few feet of each other?

A. Something like that, yes, sir.

Q. They backed away while you were there, from each other? A. Yes, sir.

Q. Without either one changing their course very much, as I understand?

A. I was not paying much attention to their courses.

Q. They were both lying about the same direction when you left?

A. As far as I know, they were.

Q. The Flyer in making this swing, could you tell how much of a swing she made and how far she was off her original course when she completed her swing?

A. I could not say, I was watching the wreck, where the wreck had happened.

Q. When was it you made this remark about the pilot?

A. When he—about the time that the Strathalbyn blew her second whistle, then I noticed that the boat was swinging so her red light disappeared and the two range lights fell into line.

Q. Why did you make that remark?

A. Because her course was so erratic.

Q. You said that because you saw her lights apparently change?

A. Yes, she seemed to be swinging.

Q. That is, you saw her lights apparently change?

A. Well, I could not see there was any change in her course required, for the reason if she kept on her course—

Q. You say her—

MR. HAYDEN: Let him answer.

MR. BOGLE: Let him answer the question.

Q. You saw her lights apparently change, did you?

A. I said I could not see any need of a change in her course.

MR. BOGLE: I move to strike that as not responsive to the question. A. There was a question—

Q. I asked you if what you saw wasn't the apparent change in the bearing of her lights? That is what you said, isn't it?

A. That is not the question you asked me.

Q. Well, I ask you that question now.

A. What is that?

Q. What you saw was an apparent change in the position of the Virginian's lights, wasn't it?

A. Yes, saw her lights change. To get back, you asked me why I made that remark; that is your question.

Q. Yes, you answered that.

A. On account of the erratic course—on account of her erratic course.

Q. What was her erratic course?

A. Well, when the Strathalbyn blew for a passing whistle and I looked back, the Virginian was coming in a straight course, on a course that would have taken her by the Strathalbyn.

Q. Do you know that, Mr. Beaumont?

A. Certainly I do.

Q. How do you know that?

A. By the position of her lights.

Q. You knew exactly how the Strathalbyn was headed and where she was located?

A. Why, certainly, she just had passed us.

Q. She just had passed you? A. Yes, sir.

Q. And the Virginian at that time was headed towards you, was she?

A. Yes, sir; you could see both her red and green lights.

Q. And then she apparently changed her course, did she?

A. Apparently changed her course.

Q. Now, we are going back to the question: You say she apparently changed her course; you saw the bearing of her lights different?

A. Quite a little bit different.

Q. How much did she change her course?

A. She swung around until her red light disappeared and her two range lights fell into line.

Q. You mean opened up so you could see both of them? A. Yes, sir.

Q. Had you seen both of them prior to that time?

A. No, sir.

Q. You could only see one?

A. I did not notice either one of them.

Q. You did not notice either one of them until the time you saw her red light shut out? A. Yes, sir.

Q. Then you looked up and saw the range lights, didn't you?

A. I knew she was swinging by her range lights changing.

Q. How much did they change?

A. Oh, I could not say as to that, I don't want to say how much. They swung in line so that I would place her at about that angle (indicating with hands) from where we were watching her.

Q. You were still standing on the forward part of the Flyer?

A. We had stepped to the rail then; we were all at the rail.

Q. You do not know what course the Flyer was steering, at that time, do you?

A. No, I do not know.

Q. You don't know whether she was bearing away from those vessels or not, to the right?

A. I could not say she was bearing away; we was headed for the red light on the point.

Q. The last time you looked forward?

A. Yes, sir.

Q. You just testified after the Strathalbyn passed you you paid no further attention to the red light?

A. No, sir.

Q. You paid no attention to what course the Flyer was steered? A. No, sir.

Q. You do not know whether she was bearing away to the right, or not? A. No.

#### RE-DIRECT EXAMINATION.

(BY MR. HAYDEN.)

Q. Mr. Beaumont, do you think any possible change in the course of the Flyer could have made a corresponding change of position in the lights at the time you saw the lights on the Virginian change their position?

A. I do not.

MR. BOGLE: Q. You had not seen those range lights up to the time you noticed they were opening?

A. Had not noticed them.

Q. How far were they opened when you first saw them?

A. Oh, just a little bit. They were—that is easier

to show than to try to describe. I don't know how you mean by "how far."

Q. What was the appearance of them?

A. Well, the two—for instance, here—here is the white light, range light, and here is the other one (indicating on drawing). This one seems to be coming around until they were in about that position (indicating).

Q. I wish you would just indicate on here, to get it clear, the position of the Virginian and the position of the Flyer at the time you looked back and saw both the Virginian's side lights?

(Witness indicates on drawing, as requested.)

MR. HAYDEN: Do you intend the Virginian to be headed towards the Flyer?

A. No, this should be over further.

MR. HAYDEN: Do you want it to head directly for the Flyer? A. No, sir.

MR. BOGLE: Just a minute; let the witness draw that; he is testifying.

(Witness continues to draw.)

MR. BOGLE: Q. You think that is nearer correct than the other, do you? A. Headed about like that.

Q. You were standing on the Flyer and you could see both of her lights? A. Saw both of her lights.

Q. When was that with reference to the point of time and position?

A. That was when the Strathalbyn blew the passing whistle for the Virginian.

Q. The Strathalbyn at that time was—

A. Was off here about (indicating).

Q. She was ahead?

A. No, that is the first whistle; second whistle, she was just passing the stern of the Flyer.

Q. Just mark that the "Strathalbyn".

(Witness marks "Strathalbyn".)

MR. HAYDEN: Mark the other one the "Virginian".

MR. BOGLE: Q. That was the positions of the three vessels at the time you looked back and saw the red and green light on the Virginian. I also understand you



to say that was the time the Strathalbyn gave her second passing whistle to the Virginian? A. Yes, sir.

Q. When did the Virginian's lights apparently change?

A. About the time that the second passing whistle was blown.

Q. They changed at that time, did they?

A. About that time.

Q. Now, you wanted to indicate on there what the change was. Just go ahead and do that.

A. This light disappeared. The red light disappeared. How will I indicate that?

Q. Continue your course forward and show how she apparently changed?

(Witness indicates on drawing.)

Q. The Strathalbyn was in approximately the same position?

A. Of course; still she was changing,—the Strathalbyn was probably going ahead.

Q. She was a little bit closer to her at this time?

A. About the time that the Virginian was swinging around, the Strathalbyn then blew her five short blasts.

Q. As her lights were changing?

A. Well, just about the time she swung around; that is when I made my remark.

Q. Those five blasts were blown at about the time that you thought the Virginian changed her course, was it?

A. After she had changed her course—about the time she changed her course.

Q. Just about the same time?

A. She had probably made her change.

Q. Had she made her change?

A. You are getting down too close. It was all—this was all happening there right at one time; now, to be positive she was changing her course when the Strathalbyn blew her five short blasts, I would not swear to that.

Q. Was it within a few seconds, one thing or the other?

A. It was within a short time of the time she blew her five short blasts.

Q. Was it before or after she blew the short blasts?

A. I would say the Virginian changed her course when the five blasts were whistled.

Q. How long was it after you observed the change until the Strathalbyn blew her five short whistles?

A. It was all right together.

Q. The collision occurred within a minute and a half, you say. A. Somewheres around that.

MR. BOGLE: I also offer this in evidence.

Thereupon said drawing was marked "Claimant's Exhibit, Beaumont No. 2," and attached to this deposition.

Q. Mark this "Virginian 2".

(Witness marks as requested.)

Q. The Strathalbyn was on this same course?

A. Yes, sir.

Q. Where was she at the time the Virginian made this apparent change?

A. Oh, I could not say; we were going from them all the time.

MR. HAYDEN: Q. You have not drawn these pictures on here with any idea of exact proportion, have you,—size of the vessels?

A. I should say not.

MR. BOGLE: Q. Is that as near to exact proportion as you can get?

A. That is the position I would say they were in.

MR. BOGLE: I want your best and most accurate recollection and drawing of that.

A. I was on the Flyer, I was not on the Strathalbyn or the Virginian—I was on the Flyer and as near as I can tell from watching them, and watching the lights swing around on the Virginian, why, that is my idea of the position they were in.

Q. That is the best you can give us from your recollection of it? That is what I want to get?

A. It is not from any recollection, it is from the position I observed it they were in from the Strathalbyn passing us and watching the lights on the Virginian.

Q. He asked you if that is accurate; is that as accurate as you can get it?

A. Accurate as I can get it, but not by any means

the position they were in. I would not have it said they were in that position.

Q. You do not know what their positions were, do you? A. Only from what I saw of the lights.

(Witness excused.)

(Signature waived.)

(Filed May 28, 1914.)

### DEPOSITION OF DAVID W. DICKIE

BE IT REMEMBERED, that on Friday, April 10, 1914, pursuant to stipulation of counsel entered herein, at the office of FRANCIS KRULL, a United States Commissioner for the Northern District of California, at his office, room 309, U. S. Postoffice and Court-House Building, in the City and County of San Francisco, State of California, personally appeared before me, the said Francis Krull, DAVID W. DICKIE, a witness produced on behalf of the Libelants. W. H. HAYDEN, ESQ., of Messrs. Hoffer & Hayden, appeared as proctor for Strathalbyn Steamship Company; W. H. BOGLE, ESQ., appeared for the Steamship "Virginian", and IRA CAMPBELL ESQ., appeared as proctor for the Strathalbyn Steamship Company, bailee of cargo, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth:

(It is hereby stipulated and agreed by and between the proctors for the respective parties hereto that the testimony of DAVID W. DICKIE may be taken at this time before Francis Krull, a United States Commissioner at San Francisco, California, and read and used in evidence in the above entitled causes for all purposes of this action, subject only to the objections made at this time. It is also stipulated and agreed that the signature of the witness to the testimony may be waived as well as the reading of the testimony over to the witness, and that the testimony may be transcribed and the original thereof sent to the Clerk of the United States District Court for the Western District of Washington, Southern Division, at Tacoma).

DAVID W. DICKIE, a witness called on behalf of

the Libelant, having been duly sworn, testified as follows:

MR. HAYDEN: Q. What is your full name?

A. David Walker Dickie.

Q. What is your business? A. Consulting Engineer and Naval Architect.

Q. What schooling and experience have you had, Mr. Dickie?

A. I began as an apprentice at the Union Iron Works, serving a period of four years in covering the three shops, ship-building, ship-carpentering and ship-fitting, steel construction.

Q. The Union Iron Works in San Francisco?

A. The Union Iron Works in San Francisco. From there I was transferred to the drawing-room, where I was employed for two years as a Draughtsman at the Union Iron Works in San Francisco, studying at night under the instruction of my father, Mr. James Dickie, who was at that time Manager of the ship-yard at the Union Iron Works. I then took the Government examination and secured appointment as a Draughtsman in the Government employ at the Union Iron Works. After that I took another examination and secured the appointment of Chief Draughtsman in the Naval Constructor's office at Moran Brothers Company at Seattle, Washington, having charge of the construction of the battleship "Nebraska". I resigned from this position to go to Scotland, to the Glasgow University, Scotland, where I took a post-graduate course for two terms.

Q. Covering what? A. Covering naval architecture, engineering and electricity. In the vacation which intervenes between the two terms I was employed by the Clydebank Ship-building Company on the Atlantic Liners "Coronia" and "Carmania". After returning to this country I was employed by the Newport News Ship-building and Dry-dock Company in their scientific department; from the Newport Ship-building and Dry-dock Company I went to the Fore Rivers Ship-building Company as a Draughtsman. During the depression in ship-building I took an appointment as Assistant Engineer of works with the National Cash Register Company at Dayton, Ohio. I landed in San Francisco

on Christmas, 1906, joining my father in business as an Engineer and Naval Architect in 1907. My brother and I joined in the business which we now have and which we built up to the standing which we now obtain in the community. I have acted as Consulting Engineer for Moore & Scott Iron Works, making estimates of costs for repairs, a most responsible work in connection with work and I made all the working drawings for them during the building of the "Coalinga", an oil-vessel here, and of the ferry-boat "Edward T. Jeffreys", which has recently been built and gone into service.

Q. Your general business now is Consulting Engineer and Marine Architect in connection with steamboats and steam shipping entirely, is it? A. Steamboats and steam shipping and also in connection with the internal combustion engines popularly known as the Disel engines here.

Q. Have you made a study of the direction that the "Virginian" took through the "Strathalbyn" from data that was furnished you by myself? A. Yes.

Q. Will you please produce the data that was given you for that purpose? A. About March 16, 1914, I received by Wells, Fargo a package containig certain blue-prints of the "Strathalbyn" numbered from 1 to 9, and also a blue-print of "Libelant's Exhibit X-15" showing repairs to the "Strathalbyn". In that same package the following blue-prints of the "Virginian"—the shell expansion forward, the shell expansion aft, the framing plan forward, the framing plan aft and a small plan showing the sections of the "Virginian" forward; also the following photographs, numbered 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, size  $6\frac{1}{2}$  by  $8\frac{1}{2}$ , showing the damaged ship, and two smaller photographs, one on the starboard side of the bow of the "Virginian" and one a bow view of the "Strathalbyn", taken on a direct line with the side of the vessel.

Q. Now, have you that data here?

A. I have the data in front of me.

MR. HAYDEN: I will say that the plans of the "Virginian" are those that were called for and that were furnished to us by the attorneys for the "Virginian".

MR. BOGLE: Are the plans of the "Strathalbyn"



referred to by the witness documents that have been introduced in evidence?

MR. HAYDEN: No. None of the plans of the "Strathalbyn" have been introduced in evidence but the one signed by Mr. Jack, and I think that we will have to use that plan of the "Strathalbyn" and that if it is required we will prove a "Strathalbyn" plan. The only purpose of that plan will be to get the width of one of the frames or beams so as to use that width as a measurement of calculating distances; I don't know that it would be necessary to take depositions in Europe where these plans come from for that purpose, because the distances will be relative anyway, as they are all balanced from that measurement, and of course if there is any error in that at all it would correspond throughout the whole measurement; but I do not believe there is any error.

Q. Mr. Dickie, I just mentioned a plan of the "Strathalbyn" that has not been introduced in evidence. Have you that handy? A. This is a plan known as "Strathalbyn" 4, inboard profile," has the builder's name, Archibald McMillan & Son, Limited, ship-builders at Dumbarton, and is countersigned evidently by their Engineer or somebody in authority.

Q. What use did you make of this plan marked "Strathalbyn 4"? A. From this plan I have taken the size of the beams on the various decks; to-wit, on the forecastle deck the beams are given as 8 inches by 3½ inches by 20-40ths inches bulb angles, on alternate frames; also on forecastle deck some of the frames are 9 inches by 3½ inches by 22-40ths inches, bulb angles; on the upper deck some of the beams are 9 inches by 3½ inches by 21-40ths, bulb angles. On the main deck, the beams are 10 inches by 3½ inches by 23-40ths inches, bulb angles, and on the stringers some of the beams are 10 inches by 6 inches by 20-40ths inches, bulb tees. One of the other stringers is 9 inches by 6 inches by 18-40ths, bulb tees.

MR. HAYDEN: That may be marked "Dickie identification 1". I have had a copy of "Libellant's Exhibit X-15" marked "Dickie identification 2"; Q. Is that

a part of the data that you used in connection with the study that you have made of the problem? A. Yes.

Q. Now, did you use any of the plans of the "Virginian" in connection with that study? A. I did.

Q. What plans did you use? A. From a small plan labeled "Section of the forward body of the Steamship 'Virginian'" I obtained the necessary sections at A, B and C, which gave me the shape of the vessel forward, and from which I built up Plan 330-E of my own.

Q. We will mark the section of the forward body as "Dickie identification 3". Did you use any of the other "Virginian's" plans? A. Yes, I used the framing plan forward body of the "Virginian".

MR. HAYDEN: We will mark that "Dickie identification 4". A. (continuing) And the shell expansion and the forward body of the "Virginian".

MR. HAYDEN: We will mark that "Dickie identification 5". Q. Did you use any other plans of the "Virginian"? A. No, that is all of the "Virginian".

Q. Did you use any photographs? A. Yes. You should introduce this one here, "Strathalbyn 6" in order to get the thickness of the shell-plating and corroborate Mr. Jack's drawing.

MR. HAYDEN: Yes, this was demanded by you, Mr. Bogle, as it was wanted to get the thickness of the shell-plating on the "Strathalbyn". We will mark this "Dickie identification 6". Q. "Dickie identification 6" is called what?

A. Shell expansion forward on the "Strathalbyn". In my examination I used photograph of "Strathalbyn" numbered 14.

MR. HAYDEN: Mark that "Dickie identification 14".

THE WITNESS: 15.

MR. HAYDEN: Mark that "Dickie identification 15".

THE WITNESS: 8.

MR. HAYDEN: Mark that "Dickie identification 8".

THE WITNESS: 13.

MR. HAYDEN: Mark that "Dickie identification 13", being also copy of Libellant's Exhibit X-16".

THE WITNESS: 18.

MR. HAYDEN: Mark that "Dickie identification 18", being also copy of "Libelant's Exhibit X-18".

THE WITNESS: That, a bow view of the "Strathalbyn".

MR. HAYDEN: Mark that "Dickie identification 19."

THE WITNESS: 20.

MR. HAYDEN: Mark this "Dickie identification 20."

Q. From your study of these photographs marked for identification as heretofore mentioned did you make any plats as a result of your study? A. I made plan No. 329-E of the "Strathalbyn" from the data given on the photographs and the drawings that have been introduced in evidence, and plan No. 330-E of the "Virginian" from the photographs and data that have been introduced in evidence.

MR. HAYDEN: Mark 30 plan of "Strathalbyn" as "Dickie identification 329-E," and mark Study plan "Virginian," "Dickie identification 330-E."

Q. From your study, Mr. Dickie, of identifications which you have just referred to, did you come to a conclusion as to the angle of approach of the "Virginian" and the angle that she went into the "Strathalbyn" after striking her?

A. The conclusion I came to was that the "Virginian" struck the "Strathalbyn" at about an angle of 33 degrees and 49 minutes, or 3.06 points of the compass, measuring from the center line of the two vessels or that the center line of the "Virginian" approached the "Strathalbyn" about square to the shellplating in the region of the forecstle-deck.

Q. From what side did the "Virginian" approach the "Strathalbyn," what side of the "Strathalbyn"?

A. The "Virginian" approached the "Strathalbyn" on the port side of the "Strathalbyn."

Q. Now, Mr. Dickie, will you please explain in detail how you arrive at that conclusion, referring to the identifications by the numbers that have been given to them, showing the corresponding numbers on your study plans?

A. From "Identification 1" of the "Strathalbyn" and "Identification 6" of the "Strathalbyn" and "Identification 2" of the "Strathalbyn," being Mr. Jack's plan of the repairs, I made a profile of the "Strathalbyn" showing the stem and the forward part of the vessel, and the location of the various decks, and marked on the plans the size of the beams on the various decks. I also made a plan of the vessel looking down showing the forecastle deck, the upper deck and the main deck. I put on the plan the upper stringer, but that upper stringer I found since had no bearing on the case, but I did not erase it. From the plans, "Identification 4," "Identification 5" and "Identification 3" of the "Virginian," I made a profile of the "Virginian" giving the location of the various decks and also made a plan view showing the line of contact of the forecastle deck, the upper deck and the main deck of the "Strathalbyn" with the "Virginian"; that is to say, the lines which are shown on the bottom of Plan 330-E, indicates the shape of the "Virginian" at the height of the point of contact of the decks of the "Strathalbyn" with the "Virginian."

Q. The study plans I have referred to and that you have just been referring to are what?

A. Are plan 329-E and plan 330-E; by referring to photographs "Identification 14," "Identification 15" of the "Strathalbyn," the marks of the stem are plainly shown on the beams that are damaged both on the upper deck and on the main deck. I will now draw those beams to correspond with the numbers as shown on my plan 329-E, which numbers were taken from the exhibits of the "Strathalbyn" which have just been introduced in evidence.

Q. Now, Mr. Dickie, you have put a lot of numbers on both "Identification 14 and 15." Commence with "Identification 15" and state what the numbers mean and their relation to your study plan, the study plan that they have any relation to?

A. No. 166 is the number which I have placed on collision bulkhead on photographs No. 14 and No. 15 and corresponds to No. 166 on my study plan, 329-E, which is the number of the frame of the collision bulkhead; the numbers 168, 170 and 172 are the correspond-

ing frame numbers to which these various beams are attached at the side of the vessel; the same remark applies to frame No. 164 and frame No. 162,—those two frames being samples of the main frames of the vessel; at the points 168, 170 and 172, there was originally a frame similar to that shown at 162 and 164, and to which these beams had been previously attached before the accident.

Q. In other words there had been frames at the places, 168, 170 and 172 but those frames don't appear in the photograph?

A. No, the frames have been torn away by the accident. Now in my study plan drawing No. 329-E, up in the lefthand corner is shown the construction of the frames and reverse bars, such as indicated by numbers 162 and 164 in the photographs, and this is drawn for the purpose of finding out the distance from the center of the rivets to the heel of the frame; this distance is shown on the sketch as 4 inches. Now by looking at plan 329-E, it will be seen that the beams No. 168, 170 and 172 on photograph "Identification 15" and "Identification 14" are given as 9 inches by  $3\frac{1}{2}$  inches by 21-40ths inches, bulb angle.

Q. You got that measurement from what?

A. This information was taken from plan of the "Strathalbyn," "Identification 1." We are only concerned for the present with the depth of that beam which is 9 inches. What I did in this particular case was to set my dividers to the depth of the beam and space off on the beam the number of depths in each case from the frame holes in the beam brackets.

Q. As shown where?

A. As shown on "Identification 14" and labeled "Frame holes" and "Identification 15" labeled the same way.

Q. Now you say you took 9 inches as being the depth of the beam. Show on "Identification 14 and 15" the beam that you took that 9 inches from and how you took it?

A. Beam No. 170 and Beam No. 168, marked with a witness mark, are 9 inches deep, this 9 inches being taken from plan "Identification 1" of the "Strathalbyn."



Q. The marks on that photograph "Identification 15" at the end of the line from that frame are 9 inches deep?

A. Yes. This method which I am using to illustrate is not as accurate as can be done by means of dividers, but I do not have the dividers with me, but I have marked with a lead-pencil on a piece of paper the depth of the beam. It is now possible to take this depth and mark on the beam with a lead-pencil spacings 9 inches apart.

Q. What photographs have you marked those spacings on? A. "Identification 15."

Q. Why did you mark off those spacings on there?

A. I have marked off four spacings from the frame holes in the beam-brackets over to the cut of the stem, which shows plainly in the flange of the beam.

Q. What beam are you referring to?

A. Beam No. 170. Now, these spacings being 9 inches apart, four 9-inch spacings would give you 36 inches, plus the 4 inches from the center of the rivet to the heel of the frame, as shown on study plan 329-E would give you 40 inches, the distance from the cut on the flange of that beam out to the heel of the frame on beam No. 170, upper deck.

Q. On "Identification 15" please mark the place that indicates the cut of the stem of the "Virginian," on that beam? A. Yes.

Q. You have marked that "Cut of stem of 'Virginian' ", have you? A. Yes.

Q. Do you find any other indications of any other beam being cut by the stem of the "Virginian"; if so, draw identification lines up to the same line that you have labeled cut of the stem of the "Virginian" from those other cuts.

A. You find the same marks on beam No. 168 and beam No. 172 of the upper deck, and I have drawn marks to the cuts.

Q. Do you find those cuts on any other beams?

A. On beam 170, on the main deck a similar cut appears.

Q. Will you please mark that? A. Yes.

Q. You might mark on "Identification 15" a line,

carrying it out to the right hand side of the picture, showing the forecastle deck, the upper deck and the main deck, so as to identify the decks? A. Yes.

Q. You have marked on the right hand side of the picture after the identification mark "upper deck" and under that "main deck" and on the left hand upper side of the picture "forecastle deck"? A. Yes.

Q. Go ahead now in your own way?

A. With these distances which I obtained in the above described manner, I laid off on my study plan of 329-E, from the intersection of the beams on the upper deck with the side of the vessel certain distances which I have found to be 40 inches on beam 168, 40 inches on beam 170, and 37 inches on beam 172. By drawing a line through those three points I obtained a line which represented the direction of approach of the "Virginian," which direction is indicated by the fact that the stem of the "Virginian" first cut beam 172 at a point 37 inches in from the side of the vessel; then when it reached beam 170 it cut at a point 40 inches in from the side of the vessel, and then when it reached 168, it cut at a point 40 inches in from the side of the vessel.

Q. On what deck was that?

A. That was on the upper deck. And by laying these distances off on the plan of the upper deck it is seen to lie in a straight line at an angle of 33 degrees 49 minutes from the center line of the "Strathalbyn."

Q. Now, assume that the "Strathalbyn" had a list of about 6 degrees to starboard when she was loaded, and using that as a fact in connection with your further explanation, continue with your explanation?

A. On photographs "Identification 8" and "Identification 9," beam 170—

Q. Mark it beam?

A. (Continuing) —on the main deck, shows a cut of the stem similar to the cuts which are shown on the beams on "Identification 15"; from this cut I measured the distance to the heel of the frame in the same manner and by the same process as I measured the distances on photograph "Identification 15." The vessel was farther away from the camera in "Identification 8 and 9" than it was in "Identification 15," and consequently the meas-

urements are taken at a smaller scale. This measurement, as close as I could make it appeared to be 15 inches.

Q. Fifteen inches from where?

A. Fifteen inches from the notch in the beam caused by the stem of the "Virginian" to the heel of the frame on beam 170 on the main deck of the "Strathalbyn." Measuring this 15 inches in from beam 170 on the main deck along the beam gave me a point of contact of the stem of the "Virginian" with beam 170 of the main deck of the "Strathalbyn," and I then assumed that the "Virginian" was on an even keel and by placing the two points of contact on beam 170 on the upper deck over beam 170, point of contact on the main deck, I arrived at the angle of the heel which the "Strathalbyn" would have provided the "Virginian" was on an even keel.

Q. You mean by an even keel with respect to the stem, what?

A. The stem was plumb up with respect to the water line. This angle was about 5 degrees and 40 minutes. This angle was lifted for the purpose of checking, to see if the angle of heel was anywhere near the angle of heel as given in the testimony, which I did not have at the time I made the study.

Q. You understand now that in the testimony the angle of heel of the "Strathalbyn" was 6 degrees?

A. I learned yesterday morning that the testimony of the "Strathalbyn" showed that the vessel had an angle of 6 degrees. "Identification No. 19" showed the vessel to have a list to starboard of about 8 degrees, but I am given to understand that the photograph No. 19 was taken after the vessel was repaired, merely to indicate how the vessel looks when she is listed. Now, by referring to photograph "Identification No. 14" and "Identification 15," it will be seen that the bead around the forecandle deck and in fact all the damage on the forecandle deck indicates that the stem of the "Virginian" struck forward of the hawse-pipe; and the fact that the cuts on the beams caused by the stem of the "Virginian" are so far in toward the center line of the "Strathalbyn," that this is an indication that the "Strathalbyn" took a list to starboard when she was struck by the "Virginian,"

which still further bears out my reasoning that the vessel had a list to starboard. By referring to photographs "Identification 8" and "Identification 9" of the "Strathalbyn," the point of exit of the "Virginian" from the wreckage of the "Strathalbyn" is at the junction of the main deck and the collision bulkhead which is on frame 166 of my study 329-E, and four frames aft of the collision bulkhead or at the junction of the upper deck and frame 162 of the "Strathalbyn" on my study plan 329-E. On photograph "Identification 14," the fourth frame aft of the collision bulkhead or frame numbered 162 is pushed aft at the forecastle deck nearly to frame No. 161, referring to the numbers on plan 329-E. These facts give the location of certain points which enable me to complete the line of approach of the "Virginian" on plan 329-E. By referring to "Identification 20," being a starboard side view of the "Virginian" after the accident, it will be noticed in three places, one at about the level of the  $23\frac{1}{2}$  foot draught mark and two others, one about 8 feet above the latter, and another one about 8 feet above that again, which show the points of contact with the "Strathalbyn"—

Q. (Interrupting) What portion of the "Strathalbyn"?

A. The deck line of the "Strathalbyn"—come opposite these points. Now, by placing drawing 329-E, and drawing 330-E opposite each other it will be found that these lines of contact when carefully laid off on both drawings come opposite each other; that is to say, that the lines on the photograph indicating the break where the shell plating of the various decks injured the "Virginian," come opposite the lines of the deck plating on the "Strathalbyn." This gave me the difference in draught of the two vessels at the time of the collision which was 5 feet 6, and I telegraphed to Mr. Hayden at Tacoma for the draughts of the vessels in order to check by reasoning at this point, and the draughts which he replied were 22 feet 6 inches forward on the "Strathalbyn" and 17 feet forward on the "Virginian," the difference between these two being 5 feet 6 inches, which checks exactly with my drawing. When the "Virginian" struck the "Strathalbyn" she carried the shell-plating,

the stem and forward structural material of the "Strathalbyn" with her, the stem of the "Virginian" following along the line drawn on drawing No. 329-E, until it arrived at about frame 167, at which point the cushion formed by the wreckage, coupled with the heeling of the "Strathalbyn" toward the "Virginian," made the "Virginian" heel to port and caused the after end of the line to be curved as shown on drawing 329-E. In order to further corroborate the angle of contact I laid off the shape of the wreckage on the "Strathalbyn"—

Q. (Interrupting) Just half a minute. Where did you get the data to lay off the shape of the wreckage?

A. By referring to photograph "Identification 15" it will be noticed that beam 170 on the upper deck is bent at a point near its center. Referring to drawing 329-E, this beam is 9 inches deep, and by spacing off on this beam the 9 inch spaces the same as I have explained previously, we find that the distance from the bend in the beam to the frame holes of the beam broken, 6 feet 2 inches plus the distance from the frame holes to heel of the frame, gives a total distance of 6 feet 6 inches; and laying this distance off on plan 329-E from the side of the vessel at the upper deck, on frame 170 we get a point which indicates about where the end of the wreckage is located. Referring to photograph "Identification No. 14" it will be seen that the end of the second strake from the top is just over the bend in beam No. 170 of the upper deck.

Q. You are indicating that how?

A. I am indicating that by a witness mark and a note at the side of the photograph, upper deck; I am also marking the end of the second strake from the top. By comparison with the strake above, which I am marking the top strake—

Q. (Interrupting) On "Identification 14"?

A. On "Identification 14," it will be seen that this plate is broken off about 10 inches back from the root of the stem or the place where the shellplating joins the back edge of the stem.

Q. Which strake is that that is broken off?

A. The second strake from the top. This is indicated by the fact that the stem is about 10 inches wide.



Q. What stem?

A. The stem of the "Strathalbyn" is about 10 inches wide and is bent back on the shell plating.

Q. Where is that stem that you are referring to now shown in that picture? Identify it, please, by a witness mark, "Strathalbyn stem."

A. I have marked on this "Strathalbyn's stem."

Q. That is on "Identification 14"?

A. On "Identification 14." Now, by referring to photograph "Identification 13" it will be seen that the lower edge of the second strake from the top is outside of the bend in beam No. 170 which I am now marking on "Identification 13," a distance equal to about 9 inches, or the depth of the beam, while the upper edge of the second strake from the top appears to be directly over the bend in the beam 170 marked before. Now by laying off on plan 329-E these two points, one directly over the 6 foot 6 mark on beam 170 and another point 9 inches forward of that and drawing a line from this point, the shape of the wreckage out to the vessel's side on the port side, on plain 329-E, we are able to get the shape of the wreckage. In order to locate the shape of the wreckage on the port side we refer to photograph "Identification No. 18," which shows on the top strake a port light which is marked by me "port light" and also a butt in the plating in the second strake from the top, the port light being about the beginning of the bend in the upper strake and the butt in the plating being aft of the bend in the second strake from the top. By referring to "Identification 6," being a drawing of the shell expansion of the "Strathalbyn," it will be seen that this port light is located between frames 171 and 172 in the upper strake of the "Strathalbyn," and that the butt in the second strake referred to is between frame 170 and 171. We now have established the two ends of the bent plates of the "Strathalbyn." As a further check on this we may take the length of the plate from the root of the stem on the port side of the "Strathalbyn" back to the port light which is on the port side of the "Strathalbyn" in the upper strake and measure this distance around the wreckage as indicated by the lines which I am now marking on plan 329-E as wreckage lines, and you will find that these

wreckage lines correspond exactly in length to the distance from the port light to the root of the stem and from the butt in the plating to the root of the stem. I will now mark the butt in the plating—

Q. (Interrupting) On what?

A. On the plain 329-E. Now, by placing the plan of the "Virginian" 330-E on top of the plan of the "Strathalbyn" 329-E, it will be seen that the contour of the "Virginian" along the lines indicated by the line of contact of the various decks of the "Strathalbyn," such as the forecastle deck, upper deck and main deck—

Q. (Interrupting) These lines of contact are shown on the "Virginian's" plan 330-E?

A. Yes—fit almost exactly into the line of the wreckage which I have laid off from the photograph on plan 329-E. From these facts I am further convinced that my reasoning from the cuts of the stem on the beams of the "Virginian" is correct; and I am still further convinced that the angle of impact and the force of the impact caused the "Strathalbyn" to list to starboard by the fact that the curve of exit of the "Virginian" from the "Strathalbyn" commences to take place at the point where the wreckage on the "Strathalbyn" had crumpled together sufficiently to form a cushion for the side of the "Virginian" to exert a pressure against. From ships of the size of the "Strathalbyn" and of the same metacentric height approximately I took the data that the period of roll of the "Strathalbyn" would be about 20 seconds, and as the length of the damage on the "Strathalbyn" is about 32 feet, I am led to believe that the speed which the "Virginian" was traveling at was about one knot an hour, when she was passing through the "Strathalbyn." By examining plan 330-E, it will be seen that in every case it so happened that the deck plating of the "Strathalbyn" came in contact with the "Virginian" at a point where there was a minimum of structure behind it to resist the force of the impact; that is to say, it will be noted that the main deck of the "Strathalbyn" cut into the "Virginian" above the top of the peak-tank.

Q. Of the "Virginian"?

A. Of the "Virginian"; that the upper deck of the

"Strathalbyn" cut into the "Virginian" above the lower deck of the "Virginian," and that the forecastle deck came in contact with the point above the middle deck of the "Virginian." This accounts in my opinion for the fact that the "Virginian" shows comparatively little damage and that at the line of these three decks on the "Strathalbyn" there is shown on the photograph of the "Virginian" three very bad cuts in the side plating of the "Virginian," one caused by the main deck of the "Strathalbyn," one by the upper deck of the "Strathalbyn" and the other one by the bulb of the anchor of the "Strathalbyn."

Q. Will you please indicate on "Identification 20" the cut that is shown to have been made by the main deck of the "Strathalbyn" and the other decks that you have referred to, writing on there if there is room, cuts by "Strathalbyn" or "S," main deck, etc.

A. I have marked on "Identification 20" the cut of the main deck of the "Strathalbyn," cut of the upper deck of the "Strathalbyn" and cut of the anchor of the "Strathalbyn," abbreviating the word "Strathalbyn," using the letter "S." The natural consequence of this was that the stiff parts of the structure of the "Strathalbyn," notably the decks, penetrated the structure of the "Virginian" while the other part crumpled and bent, clearly forming a cushion of wreckage. Another point was that the "Strathalbyn" was practically at rest at the time of the accident, as the lower part of the stem is pushed over to port instead of being pushed aft, as might be expected if the "Strathalbyn" had been going ahead; and further, if the "Strathalbyn" had been going ahead, she would have crushed in the starboard bow of the "Virginian" in a manner that does not show in that photograph of the "Virginian"; the stem pushed over to port on the "Strathalbyn" is shown on "Identification No. 18" from a point about the 29 foot mark, which I am marking on "Identification No. 18," and I am marking "Stem pushed to port."

Q. I wish now on "Identification 18" and "Identification 13" you would underline the writing that you have put on those photographs because there was some

other writing on them before you put any on there, and I want to identify your writing.

A. I will initial my writing.

Q. What initial did you put there. A. "D. W. D."

Q. As well as underlining. A. Yes.

Q. From an examination of the plans of the "Virginian" did you determine what the width of the stem of the "Virginian" was?

A. From plan "Identification 5," which shows the width of the stem between the dotted line and the full line, indicating the stem at the forward part of the drawing, it will be seen that the stem of the "Virginian" is about 12 inches.

Q. That is a fore and aft width, is it? A. Yes.

Q. Can you determine what is the athwartships width of it, at right angles to fore and aft?

A. The plan giving the athwartships width of the stem has apparently not been sent, but the thickness of the stem is about 3 inches; I know that from ships of similar size. It is not marked in here. They have apparently made a different drawing of the stem as the construction of the stem at the bottom is shown by drawing "Identification 5" to be somewhat complicated, and they have apparently made a separate drawing to get over that complication.

Q. Examining the drawing of the "Virginian" do you find her stem has any overhang?

A. The stem of the "Virginian" has an overhang of about 12 inches, which I have indicated on the drawing 330-E, and have marked "12 inches overhang."

Q. You spoke about the roll of the "Strathalbyn." Assuming that the "Strathalbyn" rolled to starboard when she was first struck by the "Virginian," would that roll have a tendency to throw the line of the cut on the upper decks of the "Strathalbyn" nearer her fore and aft center line than if she had no list?

A. It certainly would.

Q. The curve on the part of that line of entrance of the "Virginian" into the "Strathalbyn," at the after end of that line, the after portion of that line, as shown on your study plan 329-E, indicates what?

A. Indicates that the "Strathalbyn" was in the re-



turn part of the roll caused by the contact of the "Virginian"; that is to say, when the "Virginian" struck the "Strathalbyn" she rolled to starboard, but when the energy was exhausted, the energy which is inherent in the ship to return to the upright, due to her design, caused her to roll back again to the upright position, and it is this roll back that caused the line to be curved as shown. Likewise in my opinion the roll of the "Strathalbyn" to starboard carried the "Virginian" with her so that the "Virginian" rolled to port and the rolling of the "Virginian" to port would also cause the line of the "Virginian" to be curved as shown.

Q. The plans of the "Strathalbyn" show the distance between the decks to be how much?

A. The plans of the "Strathalbyn" show the distance between the decks to be about 8 feet. The upper one may have been, that is, the distance between the fore-castle deck and the upper deck may have been 7 feet 6, but I think, as close as I could measure it, they are between 7 feet 6 and 8 feet.

MR. HAYDEN: Now, I offer these identifications referred to in the testimony in evidence.

Q. Referring to the lower figure on that plan, 329-E, Mr. Dickie, I see that there are parallel lines there terminating at the right hand end of the drawing, which is the bow of the ship. What do those parallel lines represent?

A. Those parallel lines represent the center line fore and aft of the decks at various points, the one closest to the bottom of the plan representing the center line of the fore-castle deck and the one next to that the center line of the upper deck, the one next to that again, the center line of the main deck, which are so marked on the plan. The other lines are the center lines of the points of the stringer, but have absolutely no bearing on the case, and I would have taken them out but these are Van Dyke negatives, and it is quite a difficult thing to do.

Q. Why did you put these center lines of the various decks other than one right under the other?

A. The reason I put them to one side of each other, the way they are shown, was to indicate to a lay mind that the vessel had a list, and that when a vessel does



have a list, the deck above is necessarily to starboard of the center line of the next deck immediately below it, and the deck immediately below it, such as the upper deck in this case, the center line of that deck would be to starboard of the deck that was immediately below that again.

Q. Then those lines indicate the center line and the list of the ship at the same time? A. Yes.

(By consent an adjournment was here taken until tomorrow, Saturday, April 11, 1914, at 9 a. m.)

SATURDAY, APRIL 11, 1914.

CROSS EXAMINATION, DAVID W. DICKIE.

MR. BOGLE: Q. By whom were you first employed or engaged to testify in this case?

A. By Mr. William H. Hayden, attorney for the "Strathalbyn."

Q. When?

A. About December 14, about the middle of December, 1913.

Q. By personal interview? A. Yes.

Q. Where?

A. In my office, 112 Market street, San Francisco, California.

Q. Then you don't represent either of the vessels involved in this collision?

A. As a direct surveyor, no.

Q. Have you ever seen either of those vessels?

A. Yes, I have seen the "Virginian." I have not seen the "Strathalbyn."

Q. Have you ever been aboard or examined the "Virginian"?

A. I have been aboard the "Virginian" and examined her, yes.

Q. Did you examine her with a view of testifying in this case? A. No.

Q. Your testimony is based entirely upon documents, plans and statements made to you by libelant's attorney?

A. My testimony is based entirely upon the plans furnished me and the photographs furnished. I paid no attention to the statements of the attorneys in doing this expert witness work.

Q. The plans that you base your testimony on are those that you have mentioned in your direct examination? A. Yes.

Q. The plans of the "Strathalbyn," the plans of the "Virginian" and the blue-prints made by Mr. Jack.

A. Yes.

M. HAYDEN: Q. And the photographs?

A. Yes, and the plans made by myself.

MR. BOGLE: Q. The plans that you have made yourself you made from the other plans? A. Yes.

Q. Not from the ship's plans? A. No.

Q. Nor from either vessel, itself? A. No.

Q. So that your testimony is theoretically entirely based on the plans made by other parties, and photographs, and the like?

A. My testimony is a deduction of certain facts from certain distances which are shown on these plans.

Q. Not from observation, but it is your theory or deductions that you made from the facts shown on these plans?

A. I brought forward no theories. I merely measured the actual distances from the drawings.

Q. Your employment here was as an expert witness upon behalf of the "Strathalbyn," was it not? A. Yes.

Q. And unless your testimony had been favorable to their case, you would not have been a witness?

MR. HAYDEN: I object to that as immaterial.

A. If my testimony had been unfavorable to the "Strathalbyn," I would have submitted it to the attorney, and he could have used it or not, as he chose.

MR. BOGLE: Q. You understood, however, that it would not be used, did you not?

A. That would be up to the attorney.

Q. That is your understanding, though?

A. I have no such understanding with Mr. Hayden.

Q. You did not expect that your testimony would be used if it was unfavorable to the "Strathalbyn," did you?

A. I did not come to any conclusion in the matter, at all.

Q. Did that matter never occur to you at all?

A. No.

Q. What is the size of the "Virginian"?

A. She is 492 feet long, 58.3 feet beam, 31.9 feet depth of hold, 35 feet 6 inches moulded depth, 7914 tons gross, 5077 tons net; she is a three-deck and shelter deck vessel.

Q. What is the document that you are reading from?

A. This is a report which I made to Mr. Hayden of my work on this case.

Q. Where did you get the information that you embodied in that statement that you have just made?

A. That statement was taken from Lloyd's register of British and foreign shipping.

Q. You say you are reading from a report you made to Mr. Hayden. When was that made?

A. That was made about 2½ weeks ago.

Q. Is that the same paper you have been reading from during the time that you have been testifying?

A. Yes.

Q. Do you know what draft the "Virginian" had at the time of this collision?

A. I telegraphed to Mr. Hayden at Seattle about eight days after I had begun this study on this, and when I completed my studies, to please write me draught of both vessels at the time of the accident. I had come to certain conclusions on that matter, and Mr. Hayden telegraphed me on March 26th, 1914, that the "Strathalbyn's" draught forward was 22 feet 6 inches, draft aft, 25 feet, and the "Virginian's" draught forward was 17 feet and aft 20 feet.

Q. You had already deduced the theory which gave you a draught of each vessel, had you?

A. I had taken the draught of each vessel from the marks on the photograph of the "Virginian" and the draught of water of the "Virginian" as shown by the photographs, and the draught of water of the "Strathalbyn" as shown by the "Virginian."

Q. I understood you to state that you figured out the speed of the "Virginian." Was I correct in that understanding?

A. No, I think you have misunderstood me. What I figured out was that the speed of the "Virginian" must

have been about .95 of a knot to correspond to a period of roll of 20 seconds for the "Strathalbyn." I said that was quite a possible and probable condition.

Q. As a matter of fact, you cannot tell from these photographs and plans of the ship whether the "Virginian" was in motion and the "Strathalbyn" at rest, or the "Strathalbyn" in motion and the "Virginian" at rest, or both in motion, can you?

A. You can tell from the photographs whether the "Strathalbyn" was in motion or not, because if the "Strathalbyn" had been in motion, the character of the damage would have been similar to photographs which we have of other ships that have been damaged.

Q. You mean to say that these photographs demonstrate that the "Strathalbyn" was at rest?

A. Practically at rest.

Q. Will you please state what fact there is about the photographs that demonstrates that?

A. If you will examine identification No. 18, you will notice that the stem of the "Strathalbyn" is pushed over to port from the 29 foot water line down to the present water line as shown in the photograph. If the "Strathalbyn" had been proceeding ahead, the stem would have been crushed in or crushed aft, due to the fact that she was coming forward and was coming in contact with the "Virginian"—

Q. (Intg.) Just a minute there. I see you have models of the two vessels before you. You are assuming that the "Virginian" struck on the bow, in order to work out this theory, aren't you?

A. No, I know where she struck on the bow, because there is the damage to prove it.

Q. You are assuming that her angle of strike was off the port bow. A. Yes.

Q. If, as a matter of fact, the two vessels struck practically head on, the wreckage on the "Strathalbyn" below the point where the two stems struck, would be shoved to the "Strathalbyn's" port, would it not? That is the probability, is it not?

A. If both vessels struck head on, the probability is, as a matter of fact, I don't think there would be any

probability about it, the fact would be that both vessels would be crushed in on the bows.

Q. Would not the wreckage be shoved to port on the "Strathalbyn"? A. Part of it.

Q. As a mere matter of physical laws, would not the bulwarks of the "Virginian's" hull shove the wreckage of the "Strathalbyn" over to the "Strathalbyn's" port?

A. No, I don't think it would. The two vessels, head on, the wreckage would be, in the case of the "Virginian," crushed aft into the frames, and the wreckage in the case of the "Strathalbyn" would be crushed aft into the "Strathalbyn."

Q. As a matter of fact, the wreckage on the "Strathalbyn" below the break on the stem of the "Strathalbyn" was shoved to port, the "Strathalbyn's" port, was it not?

A. Yes.

Q. Would not the likelihood of being so shoved to port be less if the angle of contact was as you have described it, 3 points off the "Strathalbyn's" port? Would not the natural result of the action of the "Virginian" on the "Strathalbyn," if the point of contact was as you have described it, be to carry in and to starboard the wreckage on the "Strathalbyn"?

A. You are neglecting the fact in that question—

Q. (Intg.) Just answer the question and explain it as you please.

A. The wreckage above the cut would be carried to starboard, and was carried to starboard, as shown by the photographs.

Q. I am referring particularly to the wreckage below the cut.

A. The wreckage below the cut would be pushed to port of the "Strathalbyn," due to the shape of the "Virginian."

Q. You have stated, as I understood your testimony, that the impact of the "Virginian" was pretty nearly at right angles to the plates on the port bow of the "Strathalbyn": Is that correct?

A. At the place of the forecastle.

Q. At the forecastle deck? A. Yes.

Q. Naturally, an impact of that kind would carry the wreckage to the starboard, would it not?



A. Where the cut was above the point of the break, it would.

Q. Where it is below the point of the break, the tendency would be to carry it back, crumple it up, would it not?

A. Not as I understand it. In this case, the stem of the "Virginian" was at a different angle than the stem of the Strathalbyn."

Q. You are assuming it was? A. I know it was.

Q. You were not there?

A. But the testimony, I have since learned, bears that out.

Q. Whose testimony?

A. The testimony of one of the officers of the ship, or someone on board of the ship.

MR. HAYDEN: In connection with my examination, you will remember I said, assuming that the "Strathalbyn" had a list of 6 degrees and the "Virginian" was in an upright position, and of course he has been answering, I presume he has been answering, on that theory.

MR. BOGLE: I inferred that his testimony is based upon an assumption of the 6 degree list of the "Strathalbyn," but I understand him also to say that the "Virginian" came on at an angle? A. Yes.

Q. Not head on? A. Not head on.

Q. That is an assumption on your part. Where did you get that?

A. No, that is a deduction; that is not an assumption.

Q. Do you base your deductions here upon the testimony of any witnesses in this case? A. No.

Q. It is merely a deduction that you make from the plans and photographs that you referred to? A. Yes.

Q. And irrespective of the testimony of any witness?

A. Irrespective of any testimony. In fact, I didn't know such a thing had been testified to at all.

Q. I understand you to say that the "Virginian" was going about one knot an hour, a one knot speed?

A. No, I stated that the period of roll of the "Strathalbyn" was about 20 seconds, and that data was

taken from vessels of the same type and size, and if the period of roll of the "Strathalbyn" happened to be, in this particular case, 20 seconds, then the "Virginian" was going at about the speed of .95 of a knot per hour.

Q. And the "Strathalbyn" was at rest?

A. The "Strathalbyn" was at rest.

Q. How did you get the theory that the "Strathalbyn" was at rest?

A. From the fact that the stem was pushed over to port.

MR. HAYDEN: Q. What part of the stem?

A. The lower part of the stem from the 29-foot water line down.

MR. BOGLE: Q. If it was in motion, where would that stem have been pushed

A. If the "Strathalbyn" had been in motion, due to her enormous weight, the stem would have been crushed back to the center line of the "Strathalbyn", or practically so, due to the fact that it was coming in contact with the starboard bow of the "Virginian"; and also the starboard bow of the "Virginian" would have shown a very serious indentation due to the bow of the "Strathalbyn."

Q. Assuming that the vessels struck practically head-on, Mr. Dickie, can you mention any fact shown by these photographs that demonstrates the "Strathalbyn" was at rest?

A. I cannot answer the question, because the character of the damage does not apply to the question, that is, the photographs do not apply to the question. The photographs would not have been like this. The photographs would have shown that they were squashed or crushed at the forward end of both ships; the stem would have turned, probably, to one side, or crushed straight back in both ships, and the photographs in both cases would have shown a flat surface formed by the wreckage on both ships, if the vessels had met head on.

Q. There were plates on the "Strathalbyn" crumpled?

A. The plates of the "Strathalbyn" were sheared, like.

Q. Were they crumpled? A. Back aft, aft of the wreckage, the plates were crumpled, yes.

Q. Did you ever see the "Strathalbyn"? A. No.

Q. You don't know, except what you see on these photographs?

A. Except what I see on the photographs, that is what I am going by.

Q. Then, as a matter of fact, if the witnesses testified that the plates on the "Strathalbyn" were crumpled, that is a fact that you have not been able to gather from these photographs

A. If a witness testified that the plates on the "Strathalbyn" were crumpled and they did not show in the photograph, I would be inclined—

Q. (Intg.) You would not believe the witness?

A. (Continuing) —to ask the witness some more questions, to find out what he meant by crumpled.

Q. That means that you would not credit his testimony: Is that it?

A. He might be referring to the place aft, here, about frame 160.

Q. As a matter of fact, your theories as to the angle of contact in this case are based upon your reading of the photographs? A. Yes.

Q. And the photographs are rather indefinite, are they not? A. No, the photographs are not indefinite.

Q. You call this a beam, don't you? A. Yes.

Q. Can you point out on that photograph where the first beam shows, the first beam abaft the bow?

A. Which photograph?

Q. Any of them. How do you identify the beams you have marked on your plan? How do you identify them on the photograph?

A. You have the collision bulkhead quite plainly shown in photograph Identification 14. This collision bulkhead is quite simple to identify, as there is a drawing of the collision bulkhead, here, and this drawing and this photograph of the collision bulkhead, No. 167, are so apparently the one and the same thing, we have no hesitancy in deciding that—

Q. (Intg.) That is your number, is it?

A. That is, 166 is the collision bulk-head.

Q. That is your number?

A. That is the number I took from the plan of the "Strathalbyn."

Q. You put it on the photograph?

A. Yes. Then the plan shows that the next beam forward of the collision bulk-head is No. 168; that is this plan here, Identification No. 1. By referring to the upper deck, you will see that there is a beam indicated there, No. 168, labeled below, "9 inches by 3 1-3 by 21-40ths inches, bulb angle." You look on photograph Identification 14, and you will see a bulb angle.

Q. Where? A. Right here, No. 168.

Q. That is, you numbered it 168? A. Yes.

Q. You identify that as the beam that you referred to on the plan of the "Strathalbyn"?

A. Yes. And, again, you look on Identification No. 1 and you find on frame 170 another beam likewise marked the same size, and also a bulb angle, and you look on the photograph and you see a bulb angle beam, so placed that there is no mistaking it, that it is next adjoining the one you have just looked at, so you mark that 170.

Q. That is, you have marked it 170?

A. Yes, I have marked it 170.

Q. You infer that the beam that you have marked 168 is forward of the beam you have marked 170, do you? A. No. Beam 168 is aft of the beam 170.

Q. Which beam is the one you have marked 168 as shown on your plans 329-E? A. There is beam 168.

Q. The third from the bow?

A. The fourth from the bow.

Q. Where does the first beam from the bow show on the photograph?

A. I did not find it on the photograph.

Q. Where does the second show? A. 172.

Q. How do you figure that that is the second?

A. Because it is pointing up here at the wreckage.

Q. They are all pointing in the same direction, aren't they, on the photograph? A. Well, in a photograph of this kind, it is quite apparent that beam 168 is behind beam 170, as I marked it, and it is also quite

apparent that the bulk-head No. 166 is behind beam 168, as I have marked it.

Q. Is it apparent that the beam you have marked 172 is forward of the one you have marked 170—I mean, is it apparent on the photograph? A. Now, by referring to Identification No. 13, it is quite apparent, there, that beam 172, which I am now marking and underlining and initialing, comes out at the wreckage forward of beam 170, which I have already marked and initialed.

Q. You say that is apparent on the photograph?

A. Yes.

Q. What was the displacement of the “Virginian” at the time of this collision? A. I did not look up that point to see.

Q. Do you know what the displacement of the “Strathalbyn” was?

A. I looked up the displacement of the “Strathalbyn”, but I do not have it with me.

Q. Does the question of the relative displacement of the two vessels affect your calculation? A. No.

Q. Your deductions would have been the same, whether one vessel, the “Strathalbyn”, for instance, had been heavily loaded and the “Virginian” with no load, or the “Virginian” heavily loaded and the “Strathalbyn” not loaded? A. If the damage was the same, my deductions would have been the same.

Q. Mr. Dickie, isn’t it a fact that two vessels, striking each other at an angle, it deflects the course and direction of the both vessels—isn’t that a physical fact?

A. They have a tendency to do it.

Q. Not only a tendency, but as an actual fact, they do that? A. They do it—

Q. (Intg.) In all cases? A. (Continuing) To a different extent in each case.

Q. Depending upon the weight or displacement of the two vessels? A. Yes.

Q. The degree of divergence? A. The displacement and the size.

Q. The displacement is the same as size. It is a question of displacement and not size. The degree of divergence depends upon the displacement of the two vessels, does it not, the relative displacement of the two



vessels. In other words, if a vessel strikes a dock or fixed object, the vessel deflects, but the dock does not? A. Sometimes. The dock has deflected several times that I know of.

Q. Not if it is fixed. Now, if a vessel has a very great displacement, and more nearly resembles a fixed object, like a dock, the divergence is less, isn't it? A. Yes.

Q. So that the degree of divergence depends upon the displacement of the two vessels? A. It does.

Q. The relative displacement of the two vessels? A. Yes.

Q. And you have made no calculation with respect to the displacement of either vessel in this case? A. I looked up the displacement to see what they were, but I did not use it, after I got the size in my mind.

Q. I say, you did not know the displacement of the "Virginian", and you did not use your knowledge of the displacement of the "Strathalbyn", so your calculation was made irrespective of the displacement? A. My calculations were made irrespective of the displacement, but I looked up the displacement of the vessel in order to get the size of her in my mind.

Q. But you did not use that as a factor in your calculation? A. No.

Q. What was the beam of the "Strathalbyn"? A. 52.2 feet beam.

Q. What point? A. Amidships.

Q. Where were her light screens? A. Her light screens are on the bridge.

Q. In which direction from amidships?

MR. HAYDEN: I object to this as not proper cross-examination.

A. There is a photograph here which shows the location of those.

MR. HAYDEN: I do not think it has been introduced in evidence. A. It has not been introduced in evidence; I know that. Identification No. 9 shows the location of the light screens.

MR. BOGLE: Q. Where are they? A. One is located on the bridge and the other on the flying bridge, on each side of the vessel.

Q. At what point from the point of measurement

you have taken as amidships, forward or aft? A. I do not understand you.

Q. You gave the beam of the ships amidships, are the light screens forward or aft of that point of measurement you have taken? A. They are a little bit forward, I think, but there has been no photograph introduced in evidence to show that.

Q. Can you give the beam of the vessel at the point where the light screens are located? A. It is practically the same.

Q. How much? A. Practically the same.

Q. What is that? A. 52.2 feet.

Q. What did you take that from? A. I remember that from the other photographs which I had.

Q. What other photographs? A. Photographs which have not been introduced in evidence, that were forwarded to me by Mr. Hayden from Tacoma.

Q. Where are they? A. They are here somewhere.

MR. HAYDEN: There are the photographs which Mr. Hayden delivered to you.

A. These light screens were about 32 feet forward of amidships.

MR. BOGLE: Q. From what document did you get that distance? A. I checked that from another photograph that shows a side view of the vessel and marked "Identification No. 10", and I have laid on this photograph the length of the vessel from the forward part of the stem to the center of the rudder-post, 377.2 feet, and I have divided that distance into two parts, which gives 188.6 feet, which gives you the amidships point of the vessel, and then I have divided by a simple proportion the distance from the bow of the vessel to the amidships point and the distance from the amidships point forward to the light-screens, which gives me 32 feet.

Q. The photograph itself does not show the location of the light-screens, does it? A. Yes, it is right there. There is one and there is the upper one on the flying bridge.

Q. What is the distance between those two screens?

A. The distance between those screens would be, I should imagine, about 8 feet.

Q. No, I mean not between the upper and lower screens, but between the starboard and port screens.

A. About 52.2 feet; the ship is parallel for that distance; in fact the screens would be outside of that. You would have the diameter of the light outside of that, which would be about 16 inches more, which would make it about 53.7 feet.

MR. HAYDEN: I object to this testimony.

MR. BOGLE: 53.7 feet between the center of the lights? A. Yes.

Q. Are you able to make that as a reliable statement from the document you have there?

MR. HAYDEN: The same objection.

A. Only from the photograph.

MR. BOGLE: Q. What I want to get at is is it a guess or is it an actual demonstration from the photograph?

A. It is an actual demonstration from the photograph, but it is not correct to an inch.

Q. Within a variance of one inch it is absolutely correct, as an actual demonstration from the photograph?

A. Within a variance of one foot it is correct.

Q. One foot? A. Yes.

Q. Mr. Dickie, have you considered the lesson to be learned from the damages on the two vessels on the assumption that the "Strathalbyn" was in motion and the "Virginian" was practically at rest? A. No.

Q. Have you studied it on the assumption that both vessels were in motion? A. No. I came to the conclusion that the "Virginian" was in motion and the "Strathalbyn" was practically at rest after studying the problem. I made no effort to prove that the "Strathalbyn" was in motion and the "Virginian" at rest.

Q. Your effort was to prove that the "Virginian" was in motion and the "Strathalbyn" was at rest? A. No. My effort was not to prove that. My effort was to get the facts, first.

Q. Well, how did you get that fact. You had to take some assumption to start with, didn't you?

A. Yes, the assumption that I started with was that the plans of the "Strathalbyn" were correct.

Q. The plans of the "Strathalbyn"? A. Yes.

Q. You do not mean to say that this injury could not have been inflicted if the "Strathalbyn" was in motion?

A. I don't know what the injury would look like if the "Strathalbyn" had been in motion.

Q. In other words, you have assumed she was not in motion?

A. No; I came to that conclusion. The motion of the vessels was a determination that was made after the study of the problem, not before.

Q. Of course you had your problem on which you were working, to start with, didn't you? A. No, I did not have the answer. I had certain simple fundamental facts and I put one on top of the other until I came to a conclusion.

Q. You did have the answer that must be reached if you were going to testify, didn't you? You had that to start with?

MR. HAYDEN: I object to that as not either the truth or a fair question. The testimony is that he did not.

A. I might not have testified at all.

MR. BOGLE: Q. That is all right. Unless your conclusion was going to be to a certain extent in favor of the "Strathalbyn" you understood you would not be called as a witness, didn't you? A. No, that was not my understanding. Here were certain documents and photographs that were turned over to me to make a report upon and state my conclusions as to what took place, and I stated my conclusions as to what took place and was notified by telegraph that my deposition would be taken on a certain date.

Q. You understood by whom you were being retained, of course? A. Yes, sir.

Q. And you understood the theory of the "Strathalbyn's" case, didn't you?

A. Not before I had concluded my study.

Q. The submission of the question to you necessarily stated their theory, didn't it? A. Mr. Hayden had theories but which I paid not attention to at all.

Q. But you knew what they were?

A. I knew what he thought they were, but mine did not always agree with his.

Q. I understand that. What I mean to say is that you were employed to examine this data that was furnished to you and report whether this vessel, the "Virginian" struck at an angle of approximately 3 degrees?

A. No. I was employed to determine what angle these vessels struck and I wired Mr. Hayden—

MR. HAYDEN: I do not think that is necessary.

MR. BOGLE: I do not care to go into your communications with your attorney, Mr. Dickie.

MR. HAYDEN: I will admit I employed Mr. Dickie to make a study of this problem and directed him to make a report to me on it.

MR. BOGLE: What I am getting at is that you knew at the time the kind of report that Mr. Hayden would like to have, not that you colored your testimony to reach that, but you knew in advance what testimony he wanted and if you could conscientiously furnish that testimony you would be required to testify and if you could not you would not?

A. No, the proposition was not put before me like that at all.

Q. I don't mean he stated it to you but didn't you understand that was the situation, Mr. Dickie; you knew you would not be called as a witness if your testimony was unfavorable to Mr. Hayden's theory?

A. Yes; but I didn't know what Mr. Hayden considered favorable or unfavorable testimony. In fact, I don't know yet everything that Mr. Hayden considers favorable or unfavorable.

Q. I believe you stated that you had computed the displacement of the "Strathalbyn"? A. Yes, I have computed it approximately.

Q. Can you state what it was? A. I don't remember just exactly what it was.

Q. Can you state approximately the difference in the displacement of the two vessels? A. Not at the present moment. I could if I were at the office.

Q. Do you know the draughts of the two vessels?

A. I know the draughts now, yes.

Q. The length of the beam? A. Yes.



Q. The dimensions? A. Yes.

Q. And the draught at the time of the collision?  
A. Yes.

Q. Was there a very great difference in the displacement of the vessels? A. There was quite a considerable difference in the displacement of the two vessels. One vessel was loaded and the other was light.

Q. Which had the greater displacement? A. The "Strathalbyn" had the greater displacement.

Q. As between the two she was the more immovable, was she?

A. Yes, as between the two she was the more immovable.

Q. The "Virginian" stood higher up out of the water?

A. Yes, the "Virginian" stood up about 12 feet higher than the "Strathalbyn".

Q. Where did the stem of the two vessels strike, taking the measurements from the beam?

A. From the photographs, the stem of the two vessels struck a little bit above the 29-foot mark on the "Strathalbyn", as near as I can make out.

Q. And what mark on the "Virginian"?

A. It is a little less than the 24-foot mark.

Q. That would indicate the "Strathalbyn" had about 4 feet or 5 feet depth greater than the "Virginian"?

A. The "Strathalbyn" was drawing 5 feet 6 inches more water than the "Virginian."

Q. You stated, as I remember, that the overhang of the "Virginian" was about 12 inches? A. Yes.

Q. At what point of the ship was that?

A. That was about from the 24-foot mark up to the shelter-deck; there is an overhang there of about 12 inches on the "Virginian".

Q. That is about the point where the stem struck, is it? A. Yes.

Q. What point of the "Virginian" entered the upper works of the "Strathalbyn"? A. The forecastle-deck.

Q. That is the highest point of contact, was it not?

A. No, the bow chock was above the forecastle-deck on the "Strathalbyn", but the forecastle-deck of the

"Strathalbyn" entered about 2 feet and a half above the middle deck—the question is wrong there.

Q. What is the overhang as between that point—

MR. HAYDEN: Don't we want an answer to that question?

A. The "Virginian" crossed the "Strathalbyn" so that the line of contact with the forecastle-deck of the "Strathalbyn" came about 2 feet 6 inches above the middle deck.

MR. BOGLE: Q. Above the middle deck?

A. Of the "Virginian".

Q. What is the overhang as between that point and the point where the stem struck? A. About 4 inches between the line of contact of the forecastle of the "Strathalbyn" on the "Virginian" and the line of contact where the stems apparently met, by the photographs, on the "Virginian".

Q. Is there any overhang on the "Strathalbyn's" stem?

A. There is about 4 inches of overhang on the stem of the "Strathalbyn".

Q. Between what points? A. From about the 18 or 19 foot mark up to the forecastle-deck.

Q. What is the overhang between the point of break on the stem of the "Strathalbyn" and the forecastle-deck, the point where the "Virginian" entered the forecastle-deck?

A. It appears to be about 2 inches, maybe 2 1-2.

Q. Mr. Dickie, I understood you to state that the wreckage of the "Strathalbyn" below the break of the stem was pushed to port? A. Yes.

Q. Do you think that is consistent with your theory that the point of contact was practically at right angles to the plates of the "Strathalbyn"? A. The point of contact was at right angles to the plates of the "Strathalbyn" at the forecastle-deck, approximately only, whereas below the 29 foot mark the "Strathalbyn" was very much thinner than she was at the forecastle deck, so that the angle of contact would be different.

Q. It would be more nearly head on, would it not?

A. It would be more nearly.

Q. Your plat shows it to be much more nearly head on?

A. More approaching head on than it would be on the forecastle-deck.

MR. HAYDEN: That is with respect to the plan of the plating? A. Yes.

MR. BOGLE: Q. The tendency would be to push the plates to starboard, would it not? A. The tendency would be to push them to port.

Q. Supposing the contact was at right angles?

A. If the contact were at right angles?

Q. It would push it to starboard, would it not?

A. Yes, if it touched the plating it would push it to starboard. The fact must be borne in mind that the stem of the "Virginian" did not touch the plating of the "Strathalbyn" below the 29-foot mark.

Q. I understand that. Any impact on the plating on the port side would tend to push it to starboard, would it not? A. Yes.

Q. At right angles it would push it back? A. Yes.

Q. And that tendency would continue until you got to an absolute head on where the tendency would not be either to port or starboard? A. If the "Virginian" struck the plating of the "Strathalbyn" square on, that is, on the port side, the tendency would be to push it to starboard, and that tendency to push it to starboard would decrease in proportion as the vessels approached more nearly head on.

Q. It would be eliminated when they met head on?

A. When they met head on the plating, the stem and the forward work would be crushed aft.

Q. There would not be any tendency to push it to port until you got practically head on, would there?

A. Providing the stem of the "Virginian" touched the "Strathalbyn," there would not be a tendency to push it to port until the vessels met fairly well head on.

Q. How do you account for the fact that this wreckage below the point of break on the stems was pushed to port?

A. Because the lower part of the stem of the "Strathalbyn" was on the starboard side of the "Virginian" and came against the frames and shellplating

and stringers that were at the back, and the side pressure of the "Virginian" against the lower part of the stem of the "Strathalbyn" pushed it over to port of the "Strathalbyn."

Q. What was the difference in the plating above and below the point of break on the stem of the "Strathalbyn"? A. Do you refer to difference in thickness?

Q. Yes, the plating and the frames?

A. The frames were the same on the "Strathalbyn"; the plating immediately above the break on the "Strathalbyn" was 18 fortieths of an inch thick and the plating below the break on the "Strathalbyn" was 18 fortieths of an inch thick.

Q. That is the first plate below? A. The first plate below; and the second plate below, the third plate below and the fourth plate below, they were all alike.

Q. How were they up above? A. The top strake just at the forecastle-deck is 14 fortieths and the next strake, the second strake down is 24 fortieths; but that plate was increased in lieu of the doubling for the hawse-pipe; if there had been no doubling there for the hawse-pipe it would have been 14 fortieths, such as indicated by identification No. 6. The other plates were 18 fortieths inches thick above the break. There are four strakes of plating above the break.

Q. What about the strength of the frames above and below?

A. The frames are the same all the way as indicated by "Identification 1," the side-frames are 6 by 3 1-2 by 16 fortieths, and the side reverse frames are 4 by 3 1-2 by 16 fortieths inches.

Q. The vessel was somewhat stronger below the break in the beam than she was above? A. No, the vessel was just the same so far as plating goes the plating was the same thickness above the break as it was below the break, referring now to two strakes immediately above the break.

Q. But above that it was 14 fortieths as against 18 fortieths? A. Yes.

Q. That is, it was weaker near the top?

A. That is, it was more liable to be crushed. It is always understood to be a known fact that all vessels

are made with a forecastle lighter than the usual structure of the ship.

Q. In the case of contact, a colliding vessel entering, with a break at the stem about midway down, the bottom part of the stricken vessel would stand as against the upper, would it not? A. The bottom part of the vessel where it is thicker than the upper part would offer a greater resistance to crushing than the upper part would.

Q. The tendency of which would be to deflect the course of the other vessel and to deflect it lower down more than it did on the upper break, would it not—in other words, it would give somewhat of a list to the striking vessel?

A. I do not get the meaning of that question. I imagine the question as I understand it, in which particular case the stem of the “*Virginian*” was entered into the superstructure or forecastle-deck of the “*Strathalbyn*” and was forming wreckage there at a short period of time before it began to form any wreckage below or came in contact with the stem below, due to the overhang in the “*Virginian*” and likewise the overhang of the “*Strathalbyn*”; so the stem of the “*Virginian*” was imprisoned, as it were in the wreckage of the “*Strathalbyn*” at the forecastle-deck before it came in contact with the stem.

Q. Before the stem struck?

A. Before the stem struck below.

Q. I think you said that the overhang at that point was about 4 inches on one vessel and 2 on the other?

A. Yes.

Q. Do you think that would counteract the tendency to sheer the “*Virginian*” or cause her to list to starboard? A. I think it would, yes.

Q. I see you have numbered the beams on your plat; where did you get the information as to the indentation on each of those beams? A. From the photographs.

Q. Take the second beam back; will you show me the photograph which shows the location of the injury there?

A. “Identification No. 14” shows beam 172 extend-



ing down at an angle from the forward wreckage and by referring to plan 329-E of the "Strathalbyn" you will notice that the beams on the upper deck are 9 inches by 3 inches by 21 fortieths, bulb angle; by referring to the photograph you will see that beam 172 is a bulb angle and that it is likewise the upper deck, so that by taking the depth of the beam as 9 inches in the photograph with a pair of dividers and spacing off 9-inch spacings from the holes, the frame-holes in the beam bracket here, you will get 3 and a fraction spaces, which you have as accurately as I could find in the office, and two of which distances you had on the 4-inch space, being the distance from the rivet to the heel of the frame, as shown on the sketch, which is made in the upper lefthand corner of drawing 329-E, and these 9-inch spacings and the fraction, plus the 4-inch distance as given by the sketch gives you 37 inches, which is marked on the drawing, on beam 172. Have I made that clear?

Q. Yes, except it is not quite clear to me how you deduce that is the second beam from the bottom.

A. In this photograph it is quite clear that this is the first beam forward of the collision bulkhead, so far as the photograph shows; so by counting the beams from the collision bulkhead—

Q. (intg) The bulkhead is athwartships, is it?

A. The bulkhead is athwartships. That extends from one side of the ship over to the other, and the beams likewise extend from one side over to the other; these two beams, there is no question about this one being forward of the bulkhead, that is beam 168 is forward of the bulkhead, which is 166, and beam 170 is forward of beam 168, because when beam 168 comes to the end of beam 170 it disappears behind it.

Q. The photograph is taken from what angle?

A. The photograph is taken from an angle approaching the vessel on the starboard forward quarter.

MR. HAYDEN: Bow or quarter?

A. Bow or quarter; and by referring to photograph "Identification 13" it will be seen that this beam which is beam 172 comes from the forward side of beam 170 which I have marked on "Identification No. 13" and

which to my mind is very clearly shown to be the beam forward of beam 170; beam 172 is the beam forward of 170, and hence this is beam 172.

MR. BOGLE: Q. You have located them all by a process of reasoning, have you? A. Yes.

Q. Back of the fifth beam is not shown on any of the photographs? A. The fifth beam, as you have designated it, is the collision bulkhead, which is 166. Now examine this photograph—

MR. HAYDEN: (Intg) What photograph?

A. (Continuing) "Identification No. 14," you will see another beam shown here on frame 164. On photograph for identification "11" we have shown here the corner of the collision bulkhead, which is frame 166. Now, by examining this photograph very closely—

Q. (intg) Which you have marked and underlined?

A. Which I have marked frame 166 C bulkhead and underlined and initialed. By examining this photograph and beginning at the aft frame which is visible, it will be seen that the aft frame is what is called a single frame; that is, it is not fitted with a reverse bar as distinguished from the next frame immediately forward of it which is fitted with a reverse bar, the frame showing up to this line, which I am marking "frame" and underlining and initialing, and the reverse bar, showing with another witness mark which I am marking and underlining; the plating is shown torn away from frame No. 162 which I have marked on photograph "Identification 11" and on the plating and holes are shown with a light coming through where the rivets were in a row vertically at a point approximately equal to a distance sufficient to cover the side of the ship between Frame 161 and frame 162. Frame 163 is missing between frame 162 and 164, and by looking over on the plating you will see the frame 163. The plating has been torn away from frame 164 and on the plating you will see the holes that were used for the rivets on frame 164, which I will mark "H 164". Frame 165 is missing at the right hand end of the photograph and by looking over on the plating you will see frame 165 still riveted

to the inside of the plating, which I am marking "F 165" with a witness mark.

MR. BOGLE: Q. How do you know that is 165 instead of 164?

A. Because frame 164 is here, at the right hand end of the photograph, and is marked "Frame 164" and is a frame and a reverse-bar. First you have a frame riveted to the shell-plating at frame 161; on the shell-plating a row of holes is shown which were used for frame 162, and you may mark these holes "H 162." Frame 163 is missing between frame 162 and 164 and by looking on the shell-plating you see frame 163 riveted to the inside of the shell-plating which is folded back and is marked "F 163." Frame 164 is a frame and reverse-bar which is in its proper place at the right end of the photograph, and by looking on the shell-plating we see the holes for the rivets where the light is showing through of the rivets that formerly fastened the plating at that point to the frame 164.

Q. How do you connect those two from the photograph?

A. By counting the spaces from frame 161. Then coming one space forward we find that frame 165 is missing between frame 164 and the collision bulkhead, and by looking over on the shell-plating we find frame 165 riveted to the inside of the shell-plating, which I have marked "F 165."

Q. You mean that you find a frame which you conclude is what you call 165? A. Yes.

Q. Now, are you sure this particular one is 165 and another one is 163? How do you tell from the photograph?

A. Because when you carry your reasoning one step further, you find that frame 166, by referring to the collision bulkhead at the right hand end of the photograph, is broken off a short distance below what appears to be the upper deck. You look over here on the photograph at frame 166 and you find a broken frame which extends down to a point about opposite the break on collision bulkhead 166, which I will mark "Top of broken frame 166"; and over here on the back of the shell-plating I will mark "Bottom broken frame 166"; the top part of

broken frame 166 and the bottom part of broken frame 166 on the shell-plating originally were joined together. When you complete your reasoning and everything checks up, then you know that the part that has gone before is correct.

Q. There is nothing on the photograph that distinguishes that one frame that you have numbered 165 from a frame you have numbered 163, except you have assumed that the displaced frame 165 is the one next 166: is that correct?

A. It is an undeniable fact that frame 165 is next to 166.

Q. When originally placed unquestionably, but it is displaced here? A. Yes, it is displaced here.

Q. You are assuming that it is next to 166 in the displacement? A. After having established—

Q. (intg) You have established that 166—

A. (intg) Is correct, and that 161 is correct; consequently those between must be correct.

Q. But as between 163 and 165, I do not catch your reasoning; as far as I can see you have named them arbitrarily.

A. The frame 161 is plainly shown on the photograph, likewise frame 166 is plainly shown on the photograph, the collision bulkhead, the two frames coming opposite; between those two frames 161 and 166 there are on the vessel four frames to be accounted for. We find two of them at the right hand end of the photograph between frame 161 and frame 166 and we find the other two on another part of the photograph between frame 161 and 166 on the back of the shell-plating; in between these two frames 165 and 163, which we find in the back of the shell-plating are two rows of rivet holes which correspond to corresponding rivet-holes on frames 162 and 164; consequently we conclude that the two frames 163 and 165 as marked on the photograph originally belonged in between frame 162 and 164 and 164 and 166 respectively.

Q. I do not on the photograph find any rivet-holes between the frames marked 162 and 164, the rivet-holes—

A. (intg) The frame is missing between frame 162 and frame 164.

Q. So there are no rivet-holes or other marks on the photograph between these frames numbered by you 162 and 164 which enable you to identify the outline of another frame which you have marked 163. Isn't your marking of 163 arbitrary?

A. There are two rows of rivet-holes in the photograph marked "H 164" and "H 162" on the inside of the shell-plating.

Q. That is your assumption that those rivet-holes belong to the frames 164 and 162?

A. I assume that the rivet-holes marked "H 162" belong to frame 162 because both of them are adjoining frame 161, the frame 162 adjoining frame 161 to the right of frame 161, and the rivet-holes adjoining frame 161 to the left of 161.

Q. You have marked certain rivet-holes "H 164", that is located a very considerably distance to the left on the photograph of frame 164. What I want to know is how you determine from this photograph that the rivet-holes belong to frame 164? A. Bulkhead 166 is plainly shown here, and on the bulkhead 166 at the right hand end of the photograph the frame is shown broken off.

Q. I can understand that might enable you to identify 166, but I am talking about 164.

A. Right adjoining 166, the frame between 166 and 164 is missing, and over here on the shellplating we find a frame 165—

Q. (intg) A frame you have named 165?

A. I have named 165, because it is adjoining broken frame 166; we have now located absolutely and positively 165 due to the fact that it is adjoining 166. By a previous process of reasoning we have located frame 163. Now we find a row of holes between frame 163 and frame 165 which run in the general direction of frame holes and as frame 164 is in its proper place on that photograph we come to the conclusion that frame holes labelled "H 164" were originally used to pass the rivets through for frame 164.

Q. Would you mind restating the process by which



you identify frame 163? A. Adjoining frame 161 we have frame 162, and on the left of frame 161 we have a row of holes in the plating marked "H 162". As the row of holes adjoin frame 161 on the left and frame 162 adjoins frame 161 on the right we come to the conclusion that the row of holes marked "H 162" originally were used to pass the rivets through for frame 162. Between frame 162 and frame 164 there is a frame missing. To the left of the row of the holes "H 162" we find a frame riveted to the inside of the shell-plating. Due to the fact that the row of holes correspond to frame 162 we come to the conclusion that frame 163, which is shown on the inside of the shell-plating in the original state of the ship was placed between frame 162 and frame 164 in its proper place on the ship.

Q. Why do you say that the rivet-holes that you have marked "H 162" belong to frame 162, there being the frame 161 between the rivet-holes on the photograph and the frame you have marked 162? A. Frame 162 adjoins frame 161.

Q. On the right? A. On the right.

Q. The rivet-holes are on the left?

A. The rivet-holes are on the shell-plating which is folded back. The original shell-plating of the ship which formerly occupied its proper place on the side of the vessel, in this photograph "Identification 11" is shown folded back, disclosing to the observer of the photograph the inside of the shell-plating; consequently there is a fold or a crease in the shell-plating on a line down about to 161, and as the shell-plating is folded back of frame 161, the row of holes necessarily must belong to frame 162.

Q. I gathered, Mr. Dickie, from your statements, that you have worked up your theory of the facts from a similar study of these various photographs? A. Yes.

Q. Of course if you had seen these vessels and made a careful examination of the accident and damage done to each, you would be much more positive in your deductions, wouldn't you?

A. I would not have done it by this method at all. When I see the damage to a vessel in cases of this kind I make an accurate drawing of the ship, of every break

and of the bend and twist of the plates that are material to the case.

Q. Many things on these photographs are not very clear, are they? A. I found the photographs quite clear to give me a process of reasoning.

Q. But it is a fact that many things appear on the photographs which might mean one thing or a different thing: isn't that so? A. Being familiar with the construction of the ship anything that I see on photographs I know right away what it is.

Q. Well, your identification there of the rivet-holes, the line of rivet-holes as being the rivet-holes of a frame between what you have numbered 162 and 164 is to some extent a guess, is it not? A. No, because the spacing of the rivet-holes is shown quite plainly.

Q. I don't mean that you are guessing that it is a rivet-hole, but that it is a rivet-hole belonging to that particular missing frame, is a guess, isn't it?

A. No, it is a process of reasoning, it is a deduction, not a guess.

Q. It is not a certainty?

A. In my mind it is an absolute certainty.

Q. Well, in the crush and jam of this wreckage, it might have been the rivet-holes of a different frame, might it not? A. It is possible but not probable.

Q. Most of the facts that you have based your reasoning on are deduced in the same way? A. No.

Q. That is, the probability of a certain thing on the photograph meaning a certain thing that you apply it to?

A. To my mind the things on the photographs are absolutely the things which I have marked them. I know that would be a fact even though I might not be able to explain it definitely. I know these things to be a fact.

Q. That is, you believe them to be

A. No, I know them.

Q. It is your interpretation of the photographs?

A. It is not an interpretation, it is an actual fact.

RE DIRECT EXAMINATION.

MR. HAYDEN: Q. Now, Mr. Dickie, I just want to ask you a question or two. When I make my cross-

examination along this line, I want it to be understood I do not waive my objection to the cross-examination with respect to the distance between the lights. You were asked, Mr. Dickie, what was the distance between the lights as compared with the beam of the ship and you said, as I understand it, without looking at the photograph, that you thought it would be 53 feet 7 inches?

A. 53 feet 7 inches.

Q. Now, I want to call your attention to photograph No. 8 and ask you to look at the lower bridge and the upper bridge, the deck structure and also at photograph for identification No. 9 and to look at the bridge structure, and to a photograph I am now marking for identification 6, and also look at the bridge structures and see whether or not, now examining those photographs, the light-boxes appear to be outside or inside of the outside parts of the bridge, and whether or not you took that into consideration when you made your answers heretofore?

A. In examining photograph for identification "No. 6", the light-box appears to be even with the edge of the bridge and flying-bridge. They are not projected outside of the bridge, which I took into consideration the first time. The reason for that being probably that the vessel—

Q. (intg) I do not care for you to go into probabilities. Is there any photograph that has ever been submitted to you that permits of your measuring the distances between the light-boxes, the inside of the light-boxes, with accuracy? A. No, sir.

MR. BOGLE: Q. Do the plans of the "Strathalbyn" which have been submitted at the taking of this testimony enable you to determine the distance between the lights?

MR. HAYDEN: In connection with that, I want to suggest that you should have the data as to the tumble home of the ship taken from those plans, don't undertake to make a calculation of it, but simply state the facts as shown.

THE WITNESS: The plans of this vessel only extend to a point about 8 feet aft of the mast, and unless I had some other plans I would not be able to take the

width of that, the exact width of the vessel at that point.

MR. HAYDEN. Q. Without knowing whether or not there was a tumble home on the ship above her beam you would not be able to tell the width between the lights, would you?

A. Not knowing it exactly, no. I know she had a tumble home because all of the vessels of that type are built with a tumble home.

Q. Now I understand you to say that the beam of the ship is 52.2 feet? A. Yes.

Q. And that beam is measured across the ship some feet aft—I have forgotten the exact number of feet aft that you said,—from the position of the lights as you determined it from “Identification No. 10”? A. Yes.

Q. Why is the beam of the ship measured under deck or over deck and under which deck if it is under deck at all?

A. The beam of this ship will be measured at the widest part of the ship amidships.

Q. Under deck or over deck. A. In this ship it will be taken about below the main deck, and the vessel will tumble home from a point below the main deck up to the upper deck.

Q. The way you arrived at the distance of 53.7 feet as the distance between the center line of the lamps was by adding a distance to the beam of the ship and making no allowance for any tumble home on the ship?

A. And making no allowance for tumble home—I see by this photograph that process was wrong, that the lights are on a line with the side of that vessel, not projecting beyond the side of the vessel.

Q. There are no photographs here that show whether those lights are inside or outside of the rail, are there? That is the bulwark rail of the main deck?

A. Identification No. 9 would indicate that the light is about on a line with the bulwark rail of the vessel.

Q. But you cannot tell from that whether it is inside or not, can you? A. No, I can't tell exactly.

Q. Then as I understand it, you had made prior to this examination no attempt to determine the distance between the light-screens on this vessel and when the question was asked you you made not attempt from the

photograph to do so, but simply drew mental conclusions based on the beam of the ship? A. Yes.

Q. In connection with all of the rest of your testimony as to the damage, direction of impact and so forth, I understand that you did make actual measurements and studies for the purpose of determining that question? A. Yes.

Q. From the photographs and plans that have been introduced in evidence? A. Yes.

Q. I want to ask you, Mr. Dickie, if I ever indicated to you directly or indirectly by any process of inference that allowed you to arrive at any conclusion that I might have arrived at by a study of these plans?

A. No, sir.

Q. I will ask you if it is not a matter of fact that I asked you to take this question entirely independent of anything that you had heard about the case and to make a study of it solely from the information that was given to you for the purpose of arriving at the angle of approach from the cut through this vessel? A. Yes.

Q. I will ask you whether or not anybody else ever made a suggestion to you that you follow the conclusions that had been arrived at by me or anybody else in connection with the angle of approach of that vessel?

A. No one made any suggestion one way or the other.

Q. And have you followed anybody else's suggestion? A. Absolutely not.

Q. Is this conclusion of yours based entirely upon an independent study of these plans, photographs and drawings that have been submitted to you? A. I have followed no suggestions from anybody. These plans 329-E and 330-E are made from my own deductions from the data as handed to me and from the photographs handed to me.

Q. I want to call your attention to photograph for identification 14, and ask you, referring to the upper part of the photograph marked "Strathalbyn's Stem" if in any other photograph which is in evidence you can find the other adjoining piece of that upper part of the stem on the top strake of the "Strathalbyn"? A. On photograph for identification 11 will be found the piece



of the stem which in the original construction of the ship was immediately below the piece of the stem which is shown on photograph for identification 14 as being attached to the top strake; and by examining photograph for identification 11, it will be noticed that there is a streak of white paint across the upper end of the piece of the stem which is marked on the photograph P. S. S.—

Q. Photograph for identification 11?

A. Photograph for identification 11 has P. S. S., and by examining "Identification No. 14" it will be seen that the piece of stem marked "Strathalbyn's Stem" is broken off just above this white streak of paint which did pass around the vessel in its original condition.

Q. Can you determine anything from the rivet holes in that piece of the stem as to whether or not they met and joined the piece that you have just described?

A. It will be noted that the rivet-holes are the same spacing in "Identification 11" as they are in the photograph for "Identification 14". What I mean by the same spacing is the same character of spacing, in that they are laid off in the form of zigzag rivetting, that is, the rivetting of one row is half way between the rivetting of the other row. "Dickie identification No. 11" shows the port side of the stem whereas "Dickie identification No. 14" shows the starboard side of the stem; and I am unable to determine from the half hole which appears in "Dickie identification No. 11" at the top of the piece of the stem marked "S. P. S.", whether that fits on to the bottom half hole of the "Strathalbyn's" stem on "Dickie identification No. 14".

Q. Now, taking "Identification No. 11", the lower part of the stem with the piece of white paint on it, marked "P. S." and also with the mark "S" can you find where the other part of that stem is in any of the photographs that you have?

A. Yes. In "Dickie identification 11" you will find another piece of stem marked "Stem-bar", and by examining that piece of stem very closely you will notice that there are five holes and the half hole between the top end of the bar and the upper edge of the streak, the plating to which the upper end of the bar is attached, and by examining the lower end of the piece of stem

marked "S. P. S." you will notice that there are five holes and a half hole between the lower edge of the streak on the piece of stem marked "S. P. S." and the bottom half hole of the piece of stem which is marked "Stem-bar".

Q. Now, had the "Virginian" struck the "Strathalbyn" so that an extension of the lines of the two vessels, the lines of the keels of the two vessels would have been parallel to each other—that is, so that they struck directly head on, and had the "Strathalbyn" a list of 6 degrees to starboard, and had the stems of the two vessels crossed each other at or about the point known as waterline No. 29 on the "Strathalbyn", and had the "Virginian" entered the "Strathalbyn" proceeding along the line when the vessels were approaching each other directly head on, would it have been possible for this part of the stem shown on the top of "Dickie identification No. 15" to have remained in the position as shown in that photograph, or would it have been cut away and carried to the other side of the vessel? A. I think that the top piece of the stem shown on "Dickie identification No. 15", if it were not crushed flat by the impact of the stem of the "Virginian", and the stem of the "Virginian" had cut into the "Strathalbyn", that the piece of stem shown on "Identification No. 15" would have been pushed over to starboard and would have been joined in the other wreckage on the starboard side.

Q. Had the "Virginian" and the "Strathalbyn" been approaching each other and entered each other directly head on, considering the size of the two vessels, is it your opinion that they could have sheered off from each other in 32 feet so that they would have collided and made a cut anything like the cut shown in that photograph? A. I do not believe it is possible.

#### RE CROSS EXAMINATION.

MR. BOGLE: Q. Mr. Dickie, what is the beam of the "Virginian" at the point 32 feet back of the stem?

MR. HAYDEN: On what part of the "Virginian"?

MR. BOGLE: On the 20 foot line.

MR. HAYDEN: The 20 foot line of the "Virginian"?

MR. BOGLE: Yes.

A. The only line that I have with me on this drawing is a 23-foot 6 line.

Q. That is near enough.

A. If that is close enough the beam at that point as taken from the plans of the "Virginian" submitted to me is about 28 feet 2 inches.

Q. The facts that the hulls of the two vessels below the point of break in the stems were starboard to starboard would necessarily inevitably sheer the "Virginian" so as to make the cut bend toward the port side of the "Strathalbyn", would it not? A. Yes, it would.

Q. You have no data that would enable you to determine with any certainty just what the amount of that sheer would be, have you. A. No.

Q. In answer to my question you said that the distance between the lights was 53.7 feet. On your re-direct examination I understand you withdrew that statement?

A. That statement is not quite correct. I assumed that the lights were outside of the bridge but by examining the photograph I find that they are not outside of the bridge.

Q. Can you from the data that you have determine what was the distance between the lights, approximately?

A. They were about 52 feet, or the beam of the ship. The plans that have been furnished do not extend far enough aft to give me the accurate measurements.

Q. The complete plans of the "Strathalbyn", if they had been furnished, would have given you the exact distance, would they not? A. Yes, they would.

Q. You are not able to give them exactly because you have not the complete plans of the "Strathalbyn"?

A. The only plan that would give me that would be the plan of the amidships section, and the plan of the amidships section in this particular case, except to determine that one point of the lights is immaterial.

Q. I understand, but it has not been furnished?

A. Not to me, no.

Q. The builders have complete plans of these vessels, haven't they? A. Yes.

Q. Have they plans which would show the exact distance between those lights? A. Yes.

FURTHER RE DIRECT EXAMINATION.

MR. HAYDEN. Q. Mr. Dickie, in the construction of a vessel, in the manner of placing the light-boxes on the bridges, isn't it a matter of fact that the light boxes, when they are so placed, do not conform to the inch to the plan laid down in the ship? A. The construction of the ship out to the point of the back of the light, for example, examining "Photograph for identification No. 9"—when the drawing for the bridge was made, the distance from the center line of the ship to the end of the wind-break on the bridge would be given on the plan, and it would then only be necessary to add the depth of the light in order to get a very accurate measurement of the light from the center line of the ship, or doubling that distance you would get the total distance between the two lights.

Q. The plans might call for a certain width of the bridge around, that is, the railing around the bridge, and in the construction of the railing the carpenters, whoever does the work, might not do it with absolute accuracy in accordance with the plans; in other words, that is not, is it, or is it not, one of the parts of the ship that would require the great accuracy that might be required in connection with the cutting of the rivet-holes or something of that kind in the plates? A. Great accuracy in this particular case of the width of the bridge would not be necessary, but I think you will find that they would work very close to the plans; in fact it must be borne in mind that in working to a set of plans, the particular plan which you have in front of you is only part of a system of plans by which the whole ship is built, and if you depart from one plan you necessarily must go and see how that affects all the other plans.

Q. That statement would be true when you started from the keel up? A. Particularly true.

Q. When you are putting the railing around the bridge it would not be so important?

A. It would not be so important.

Q. And the accuracy of distance between the lights could best be determined by an actual measurement of the distance between the lights on the ship as she is finally constructed?

A. That is the absolute and positive method of getting the accurate and positive distance between the two lights.

Q. Would you say that the "Virginian" was a blunt ship or a fine ship? A. The "Virginian" is a fairly fine ship for a cargo ship; she is not quite as fine for a passenger ship.

Q. Do the plans that have been submitted of the "Virginian" show her decreasing width as you go down from the 23-foot line to her bottom at the bow?

A. Yes, the plan for "Identification 3" in Section C will give you the idea.

Q. Take Section C here, how far is that aft from the stem of the "Virginian"—you are referring to "Identification 3"? A. Yes, about 25 1-2 feet.

Q. Can you give just a little pencil sketch down here of how the bow of the "Virginian" would look going back? I mean what kind of a line it would make, say at a distance of 5, 10 or 25 feet back? A. Naturally there will be a little inaccuracy on account of the shrinkage in paper in printing. I have marked on the drawing the approximate shape of frame 193, frame 196, frame 200, frame 202 and frame 204.

Q. The perpendicular line to which these curved lines converge at the bottom would be the stem?

A. That is the center line of the stem looking at the bow of the vessel.

Q. As I understand, looking at the bow of the vessel?

A. Yes. I have also marked down frame 198 as that seems to be halfway between two frames.

#### FURTHER RE-CROSS EXAMINATION.

MR. BOGLE: Q. Mr. Dickie, was there any cut or break in the "Strathalbyn" below the point where the stems crossed?

A. I don't know. I saw somewhere, I think it was on Mr. Jack's plan—that shows the point where the stem is renewed. This "Dickie Identification No.



2" shows that the stem was renewed from the 14-foot waterline to the top, so that the distance between the 14-foot waterline and the 29-foot waterline, where the actual break occurred, is 15 feet, which would lead me to believe that the pushing of the "Strathalbyn's" stem over to port had probably spoiled the stem for use on the vessel down to a point somewhere near the 14-foot line.

Q. There is nothing to indicate that any part of the "Strathalbyn" except her stem was damaged below the point of contact of the stems?

A. Except the photograph "Identification No. 18" which shows that the two plates extending from the 29-foot line down to the 24-foot line and the next plate below that again on each side of the vessel from the 24-foot line down to about the 19-foot line, are actually shown damaged in the photograph. The plates are shown on "Photograph for identification 18" as being buckled at the stem; the four plates are shown buckled in the photograph. Beyond that the damage is below the water and you cannot see it in the photographs.

Q. You have nothing to indicate, to show whether there was any other damage below the point of contact of the stems or not? A. Nothing except "Identification No. 2", Mr. Jack's plan, which gives the repairs.

Q. What was the beam of the "Strathalbyn" 10 feet back from the stem? A. Which particular deck do you refer to now?

Q. Take the main deck?

A. At the main deck the beam of the "Strathalbyn" 10 feet back from the stem is about 12 feet 4.

Q. What is it 20 feet back? I mean what would be the draught from the main deck?

A. The draught from the main deck or the height from the main deck to the bottom of the keel, which is the same thing, would be about 28 feet 9 inches.

Q. The "Virginian" struck the stem then of the "Strathalbyn" just above the main deck? A. Just above the main deck.

Q. Does the vessel widen or narrow from the main deck down?

A. She narrows from the main deck down.

Q. The main deck is the broadest beam she has?

A. No, the forecastle deck is the broadest beam she has, and she gets no narrower from the forecastle down to the upper deck and narrower again to the main deck.

Q. Does she narrow sharply or has she a round bottom?

A. At the forward frame she narrows pretty near a straight line with a short kink at the fore-foot.

MR. HAYDEN: I want to introduce these other photographs that have been marked for identification, in evidence.

MR. BOGLE: These papers that were produced by libelant in response to notification of the claimant, that he would require the production of the plans of the "Strathalbyn", if produced, we offer them in evidence.

MR. HAYDEN: I think they are all in, offered by us.

(Filed April 23, 1914.)

DEPOSITION OF CAPTAIN JAMES BURNS,  
on behalf of Libelant.

BE IT REMEMBERED, that on the 26th day of May, 1914, at nine o'clock a. m. on said day, before the undersigned, appeared Mr. W. H. Hayden, proctor for libelant, and Mr. Lawrence Bogle (of Messrs. Bogle, Graves, Merritt & Bogle), proctor for respondent, claimant and cross-libelant; whereupon the following proceedings were had:

It is stipulated that the testimony of the witness, Captain James Burns, may be taken at this time before and reduced to longhand by Earl E. Richards, and may be used and introduced in evidence for all purposes in this case, subject only to the objections made at this time as to the relevancy, competency, or materiality of the testimony; and it is further stipulated that the signature of the witness be waived and that the deposition need not be read over to him.

JAMES BURNS, having been produced as a witness on behalf of LIBELANT, and having been first duly sworn to tell the truth, the whole truth and nothing but the truth( testified as follows:

Q. (Mr. Hayden) Captain, you are the same witness who was examined in this case before, and were, at the date of the collision between the "Strathalbyn" and the "Virginian", the master of the steamer "Flyer"?

A. Yes.

Q. Captain, in this case one L. Crawley testified that he was in the pilot house of the "Flyer" on the voyage from Seattle to Tacoma, and when he was between Pully Point and Robinson Point the "Strathalbyn" was approaching, and he testifies as follows: "Q. You say that Captain Burns was in the pilot house with you A. Yes sir." Is that statement true, or otherwise?

A. Oh, yes, yes.

Q. You were in the pilot house?

A. Yes, in the pilot house.

Q. (Reading) "Q. Was he in the pilot house when you passed the 'Strathalbyn'? A. Yes sir, he was there." Is that statement true, or otherwise?

A. That is true.

Q. (Reading) "He"—referring to you—"kind of got kind of nervous at the time we were going by the 'Strathalbyn' too." A. That is not true.

Q. That is not true. Mr. Crawley is asked, "When was this, Mr. Crawley—when you were abeam of her?" And he says "Right abeam." Were you nervous when the "Strathalbyn" went by you right abeam? A. No.

Q. Is that statement true or not true?

A. Not true.

Q. He was asked, "Did he make any remark about this side light?" He answer, "He could not see no side lights at all." Did you make that remark? A. No.

Q. Did you make any remark of that kind?

A. No statement of that kind at all.

Q. He was asked, "How did you know that he"—Captain Burns he means now—"didn't see the side lights?" He answered "He made the remark, he said 'She has not got no side lights, she has not got no light burning.'" Did you make that remark?

A. No remark of that kind at all.

Q. Did you make that remark at any time?

A. No time at all.

Q. Did you make any remarks like that or anything like it? A. No, nothing like it at all.

Q. He was asked, "Was that the time he seemed to get nervous?" He answered, "Well, he was a little nervous at the time, yes." He was asked, "You say he got nervous?" Answer, "He drops one window down and the other comes down, three windows come down, one window after the other". State whether or not that is true? A. Not true.

Q. He is asked this question, "That was all the remark he made was it?" And he answered, "That is all the remark. He says 'Those ships are getting close together,' something like that. He just made the remark. He didn't have much to say outside of dropping the windows down kind of lively." Did you make any remarks about those ships getting close together?

A. When they blowed signals I says to myself, "They are getting close together," that is all.

Q. What signals do you refer to?

A. The danger signals. I didn't have much time, they were together before I could say it.

Q. Then he says, "He didn't have much to say outside of dropping the windows down kind of lively." State whether you dropped the windows down kind of lively, or not.

A. No, I never dropped the windows down. We got back to the ship.

Q. You got back to the ship, you mean you were busy—

A. (Interrupting) When I got back to the wreck.

Q. Then you dropped the windows down?

A. Sure. No excitement about me at all.

Q. What is the fact, captain, as to whether or not you took any particular notice, as you now remember, to see the red light on the "Strathalbyn"?

MR. BOGLE: Oh, I object to that. The witness testified some two years ago positively on that point.

Q. (Mr. Hayden) Go ahead, captain.

A. Well, it is just the same as I testified to, exactly.

Q. (Mr. Bogle) Do you remember what that was, at this time, captain?

A. I didn't take particular notice of the side lights at all; I never took any notice of it at all whether—

Q. (Mr. Hayden, interrupting) Now, captain, on the 18th of January, 1912, you appeared before the inspectors— A. Yes.

Q. (Continuing)—and gave you testimony, in Seattle? A. Yes.

Q. And before the inspectors, about this collision?

MR. BOGLE: Do you claim that this is in rebuttal of any testimony, that you are taking now about this before the hearing?

MR. HAYDEN: You took your testimony as to this witness after I had agreed with you that the testimony was all closed.

MR. BOGLE: That testimony was in rebuttal of some of yours, but this is going back to the question of this side light, when the captain has testified in the case, two days before the trial.

MR. HAYDEN: You didn't put your witnesses on before I closed my case.

MR. BOGLE: No.

MR. HAYDEN: And I have a right to contradict their testimony, if it is to be contradicted; I have a right to at least come back; I have the closing of the case, I believe from my standpoint, is what I am trying to do.

MR. BOGLE: You claim this is in rebuttal, then, do you?

MR. HAYDEN: Yes, I claim this is in rebuttal to the testimony that you have put in.

MR. BOGLE: We can keep this up in a circle forever, you know.

MR. HAYDEN: That is what I thought when you put your witnesses on.

Q. (Mr. Hayden) Captain, on page 96—

MR. BOGLE: (Interrupting) Are you going into the question of those side lights? If you are, I will go upstairs and get the captain's testimony.

MR. HAYDEN: Here it is, you may use it.

MR. BOGLE: I mean the testimony he gave previously.



MR. HAYDEN: I just want to ask him what he testified to before the inspectors.

A. The inspectors is what I said—

MR. HAYDEN: (Interrupting) I would just as soon let you read this into the evidence, just what it is, instead of asking the captain about it at all.

THE WITNESS: That is straight, that there.

Q. (Mr. Bogle) Is the testimony you gave in the case straight, too? A. Yes, sure.

Q. (Mr. Bogle) Why the necessity of changing it? A. No, I don't want to change it, no.

Q. (Mr. Bogle) What is the necessity of going into it? I can't see.

A. Everything I gave in testimony is straight.

MR. HAYDEN: I want the record that he gave before. He gave his testimony before the inspectors.

MR. BOGLE: On what grounds do you go back and take the testimony—

MR. HAYDEN: (Interrupting) This is a question of veracity of this man as against the other man. This is a question of a statement that he made before this man was ever called and a few days after the collision occurred and a few days before he gave his testimony in this case. This is going into the veracity of this man as against the veracity of another man.

MR. BOGLE: You have gone into the —

MR. HAYDEN: (Interrupting) I want to show the statements that he made heretofore, to corroborate the statement that he is making now.

MR. BOGLE: You have gone into every statement that this man attributed to Captain Burns, and he has testified as to every such statement. Now, I can't see any object of your reading into the record or going over the testimony taken before the inspectors, unless it is for the purpose of contradicting your own witness.

MR. HAYDEN: Simply for the purpose of showing that Captain Burns is making a consistent statement now, that was consistent with the facts as he stated them on the 18th of January, 1912.

MR. BOGLE: No one is claiming Captain Burns has not testified positively and correctly according to

his own knowledge in this case. I am not contradicting Captain Burns. I think he has told the truth as he saw it.

THE WITNESS: Just exactly.

MR. BOGLE: And why should you do it? That is what I can't see.

THE WITNESS: Just the way I saw it, it is there.

MR. BOGLE: Certainly, you testified captain, I believe just fairly and honestly as you saw things.

THE WITNESS: This man giving that testimony, that makes a God damn fool out of me, that is all.

Q. (Mr. Bogle) Captain, have you read his testimony, or have you talked with Mr. Hayden about it?

A. I have talked to—Mr. Hayden told me about it, which I got sore about him telling me about this. Such a thing never occurred.

Q. (Mr. Bogle) Did you read the man's testimony?

A. I read it, yes—Mr. Hayden read to me, sure.

MR. HAYDEN: I just want to put this statement into the record:

Q. (Mr. Hayden) This was what was testified to before the inspectors, was it, captain: "Well, have you any reason to believe that the red light was not lit?"—

MR. BOGLE: I object.

Q. (Continuing) Answer, "No sir, I don't know, sir, whether it was lit. I didn't see any light there at all." Is that what you testified to?

A. That is, exactly, what is on there.

Q. I want to put this question in: "Was the green light of the 'Strathalbyn' as good a light as the ordinary burning side light? A. Yes sir. It seemed to me to be just like an ordinary oil light would be." That is a statement you made, is it? A. Yes, sure.

Q. Another question was asked by Mr. Whitney: "Were the white lights of the 'Strathalbyn' steady lights, or were they unsteady, flare up and go down?" And was this your answer, "Well, they looked to me to be steady all right, sir." Is that as you now recollect it?

A. Yes, sir.

Q. And it was your answer at that time? A. Yes.

#### CROSS EXAMINATION.

Q. (Mr. Bogle) You don't mean at this time to con-

tradict any testimony you have given in this case, do you, captain?

A. No, I don't mean to contradict anything at all. I want everything right.

Q. Certainly. I am not trying to contradict your testimony. Captain, when was Mr. Crawley's testimony first called to your attention?

A. Why, Sunday Mr. Hayden came down.

Q. Mr. Hayden took a trip with you on the "City of Everett" Sunday, didn't he? A. Well—

MR. HAYDEN: I will admit that, and I went over the testimony with him thoroughly.

MR. BOGLE: Just a minute. I will get it out of the captain.

MR. HAYDEN: I admit it.

Q. (Mr. Bogle) He went over that testimony with you, didn't he?

A. Yes, he went over it with me.

Q. Did he read all of Mr. Crawley's testimony to you? A. Yes.

Q. The entire testimony? A. Yes.

Q. Did you see the record so that you know whether he did?

A. Well, he read it all, as far as I know. Of course I didn't want to hear any of the rest of his testimony, only I wanted to hear what he had to say about the pilot house and me getting excited; that is the only thing I was interested in. The other part of it, I didn't care anything about it at all, I didn't want to hear it.

Q. You know Mr. Crawley, don't you?

A. I know him. I have had him work for me, yes. And he has got no right to come around here and make such a play as that for me, you know, because I ain't running—or letting any watchman or quartermaster or anybody run my boat, because I am master of my own boat, and that is understood. I don't talk with the quartermaster at the wheel, or pass any remarks to the quartermaster about other ships, or talk to him. I want him to pay attention to his work. I am running the ship, and I don't let no quartermaster run ships for me, or watchmen, whoever they may be.

Q. Did you understand, from your conversation

with Mr. Hayden, that he claimed in any way that you were consulting him about running the ship?

A. Mr. Hayden—

MR. HAYDEN: Consulting whom?

Q. (Mr. Bogle) That Crawley was consulting—you were consulting Crawley about running the ship?

A. No, but the testimony—seemed that he was at the time running the ship—helping me run the ship—when he would make a statement of that kind.

Q. I think you entirely misunderstand his testimony.

A. Well, that is the way—

Q. (Interrupting) Did Mr. Hayden tell you any of the quartermasters had changed their testimony in this case?

A. No, not a bit, only this testimony he gave that I got excited and singing out “No lights” and which I never did.

Q. You have talked with Mr. Joshua Green about this matter, haven’t you?

A. Oh, yes, I have talked to him.

Q. You told him what Mr. Hayden had said to you, didn’t you?

A. Told him what Mr. Hayden had said?

Q. Yes, about that quartermaster’s testimony?

A. No, I—

Q. (Interrupting) You talked to Mr. Green and Mr. Burns both?

A. No—I talked to Burns. I reported it when Mr. Hayden came down. He says, “You can go”, he says, “any time he has got a subpoena before you get off with the boat.”

Q. Did he tell you anything about what Mr. Hayden had said to you on this trip to Everett Sunday?

A. No.

MR. HAYDEN: Did he tell—who, Burns tell him what I said?

Q. (Mr. Bogle) Did you tell Joshua Green or Mr. Frank Burns?

A. I told Mr. Burns what the quartermaster had said, yes; sure I did. I went to keep Mr. Burns posted, just to let him know just that I am telling the truth in this fact, not a lie one way or the other.

Q. No, nobody has even intimated that; I certainly never have.

A. No. I was kind of glad Mr. Hayden did come down and speak to me about it.

Q. Did you think there was anything in Mr. Crawley's testimony which reflected in any way upon your ability as a master?

A. It certainly did.

Q. That is the way you understood his testimony?

A. That is the way I understood his testimony. Take it in your case, if you got excited and rattled at your business you would think it was foolish.

Q. He didn't say you were rattled, captain.

A. Well, it seems to me so.

Q. All he said you did was to put down the windows and made some remark about it having no side lights just when you were abeam of her.

A. The testimony don't say that—the testimony, the way Mr. Hayden read it.

MR. HAYDEN: The testimony says just exactly what I read to you, captain, just now.

THE WITNESS: Yes, that is it, just the way I think about it.

MR. HAYDEN: I read it out of the record to you just now.

Q. (Mr. Bogle) (Reading) "He kind of got kind of nervous at the time we were going by the 'Strathalbyn,' too"—

MR. HAYDEN: Don't you call that getting excited?

Q. (Continuing) —do you think that reflects in any way upon your ability?

A. I think it does. Don't you?

Q. I don't, captain, not in the least.

A. A man that has charge of three or four hundred passengers on a ship, and a man to make a remark that I get nervous with them, it reflects on my living. Who wants you if you get nervous when you get in a pinch?

Q. You were not in a pinch, you were abeam of her, passing her. A. No, but—



Q. (Interrupting) You were abeam of her, passing her; you were in no danger.

A. I know where I was all the time.

Q. But I say there was nothing that reflected on your ability.

A. That testimony does, though, to me.

Q. You misunderstand it, captain, you entirely misunderstand the testimony. You didn't see any side light on the "Strathalbyn," did you?

A. I didn't notice any.

Q. Did you look for it, captain?

A. I didn't look for it, no sir.

Q. You didn't look at all?

A. No, I didn't look at all. I seen his range lights.

Q. She didn't have range lights—you know that.

A. Well, I know she did.

Q. No.

A. Well, that's all right now. I know she did.

Q. Well, captain, her master and pilot—

A. (Interrupting) That's all right.

Q. (Continuing) —testify she did not.

A. What they say and I say is two different things. So you can take that from me. What I says to the inspectors is—testimony will tell you the same thing there.

Q. Captain, if there had been a port side light burning on the "Strathalbyn", do you think you would have seen it?

A. Well, I might have seen it and I might not, I might not have noticed it.

Q. Do you think it likely that you would have noticed it, captain?

A. Oh, yes, lots of things happens about—

Q. (Interrupting) What is your honest opinion as to whether or not she had a side light burning—port side light?

A. Well, it may have been burning and I would not have seen it or noticed it; that is my opinion of it.

Q. So you did not look for it, captain? A. No.

Q. Is that your testimony now, that you did not look for it? A. Well, I didn't notice it.

Q. Captain, did you consider that those range lights which you saw were good lights or dim lights?

A. As for lights, fairly good, I could see them. I never took particular notice whether they were bright, dim, or any color; I could see them.

Q. How far away do you think they were when you saw them?

A. Oh, a mile and a half or two miles or more.

Q. Or more? A. Yes.

Q. And after you saw them, how long was it before the two vessels were abeam?

A. Before the two vessels were—

Q. (Interrupting) The “Flyer” and the “Strathalbyn” were abeam?

A. Well, I should judge about probably five or ten minutes.

Q. Do you think it was as long as that? A. Yes.

Q. If you testified differently in your other testimony, would that be nearer correct?

A. Yes, it would. Of course two years is a long time.

Q. Do you remember how far you were past the “Virginian” when you saw them?

A. Well, let’s see now, how far—I think about three—two—300 feet or something more than that.

Q. Ahead of her I mean?

A. Yes, about seven points astern more or less.

Q. And you think you were only two or three hundred feet ahead of her?

A. Something of that kind.

Q. If you testified in your former testimony that you were an eighth of a mile ahead of her, would that be nearer correct?

A. Yes, somewhere like that—more or less.

Q. And you think it was at least five minutes from the time you saw the light—

A. (Interrupting) Something of that kind, probably more.

Q. How long was it when you passed the “Virginian” before you saw the light, in time?

A. Before I saw the “Virginian”?

Q. No, after you passed the “Virginian,” how long was it before you saw the “Strathalbyn’s” lights?

A. Oh, I saw the “Virginian” just after I passed—

saw the "Strathalbyn" just after I passed the "Virginian".

Q. About how long after? A. Well, right after.

Q. Was it a minute?

A. We both changed the course, we both took our time at Pully Point—the "Virginian" and the "Flyer".

Q. Was it a minute after you passed the "Virginian"?

A. Well, it was somewhere probably a minute or not that long.

Q. Is your estimate of time and distances very accurate now, captain, are the estimates you give now very accurate?

A. Well, they are—the time I give on the—the time I give on the testimony before the inspectors is just as near as you can get it; and now, why, I can't just recall the right time or distance. I thought this case was all over with or I would have paid a little more attention to it.

Q. Captain, do you think, now, that the testimony that you gave before the inspectors is more correct than any testimony that you might give now; in other words, was your recollection of the facts clearer at that time than it is now? A. Certainly.

Q. And you are willing to stand by your testimony before the inspectors? A. Oh, sure.

MR. HAYDEN: Do you want to introduce the whole of it in evidence?

MR. BOGLE: I will introduce the whole of it in evidence.

MR. HAYDEN: All right.

MR. BOGLE: Subject to our objection.

MR. HAYDEN: It is you who is introducing it.

MR. BOGLE: I introduce it because you have gone into that evidence, only. It is by stipulation to go in as a part of the testimony of this witness.

MR. HAYDEN: You can copy that right in that way, if you want to. Just as well to have him copy it right in.

MR. BOGLE: Yes.

MR. HAYDEN: So I will have my book back in the office, is what I mean.

MR. BOGLE: Yes. By stipulation of the parties, it is agreed that the testimony of Captain Burns, given before the inspectors, is copied into the record as a part of this hearing. We had better let it go at that, hadn't we?

MR. HAYDEN: I don't care.

The testimony of the witness given before the inspectors, above referred to, is in words and figures as follows, to-wit:

"CAPTAIN J. BURNS, having been first duly sworn, testified as follows:

"Q. (Mr. Whitney) J. Burns, is it?

"A. Yessir.

"Q. Captain Burns, were you master of the 'Flyer' on January 12th in the evening when the steamship 'Virginian' and the steamship 'Strathalbyn' were in collision? "A. Yes sir.

"Q. Were you in that vicinity? "A. Yes sir.

"Q. Did you pass either or both of those ships before that collision?

"A. I passed the 'Virginian' and passed the both of them, yes sir.

"Q. Where did you pass the 'Virginian'?

A. Passed her somewheres between Pully Point and Dash Point, sir, somewheres in that vicinity, or right off Pully Point I passed her; both of us was abreast there together.

"Q. Did you pass the 'Strathalbyn'?

"A. Yes sir.

"Q. Where did you pass her?

"A. We passed her about—well, I should judge about a mile on the other side of Pully or more; I could not tell just exactly the distance.

"Q. (Mr. Turner) You passed one ship and met the other one?

"A. Met the other one, yes.

"Q. (Mr. Whitney) You met the 'Strathalbyn'?

"A. Yes sir.

"Q. Now, did you pass the 'Virginian' and 'Strathalbyn' about the same distance apart, or was there a difference?

"A. Oh, there was a difference. I passed the 'Vir-

ginian' probably 200 or 300 feet and I passed the 'Strathalbyn' probably a half a mile or three quarters of a mile.

"Q. The 'Virginian' was very closely on your track when you passed her? "A. Yes sir.

"Q. Must have been if you passed her only that distance. Did you change your course to pass her, or did your course take you outside of her?

"A. No sir, I had to change my course to go on the outside of her.

"Q. Did you pass the usual signals? "A. Yes sir.

"Q. Did you pass the usual signals with the 'Strathalbyn'? "A. Yes sir.

"Q. After swinging out for the 'Virginian', had you swung back to your usual course to Point Robinson before meeting the 'Strathalbyn'?

"A. No sir, kept her on the same course as I steered from Pully Point—from Alki Point to Pully Point, so I could clear the other vessel.

"Q. Had you seen the other vessel as you were passing the 'Virginian'? "A. Yes sir.

"Q. What did you see on the other vessel?

"A. I seen his range light, sir.

"Q. (Mr. Turner) Did you see his headlight?

"A. I seen his headlight, yes sir, and the light on his main mast—the range light.

"Q. (Mr. Whitney) Did you see his side lights, either of them?

"A. I didn't see the red light, sir, at all.

"Q. (Mr. Turner) Did you see the green light?

"A. I seen when I came back to the vessels, yes sir.

"Q. (Mr. Whitney) When you first saw his range lights, were they in such a position that you could have seen his green light had it been burning brightly—

"A. (Interrupting) Yes sir.

"Q. (Continuing) —and in position?

"A. Yes sir.

"Q. Were his lights in range?

"A. His lights was in range, his range lights were in range, kind of across, you know; he was coming up on me and I was going that way and he was laying that way (illustrating). That is the only way I had to tell which way he was going.



"Q. Was he headed direct—what I mean is, when you first saw him was he headed directly towards you?

"A. No sir.

"Q. Well, how would you—

"A. (Interrupting) I was heading southeast by south, five-eighths south, and that would fetch me pretty well over to this side of the light, and he was coming, you see—

"Q. (Interrupting) But you don't understand what I mean. No matter from what direction he might be coming from. Was his head pointed towards your vessel? "A. No sir.

"Q. That being the case, one or the other of his lights—his side lights, would be shut out, no matter if they were burning brightly and you were able to see them. What I am trying to get at is this: You said you didn't see his green light until you came back.

"A. No sir.

"Q. Was the head of his vessel such that you could have seen it, no matter how close she may have been to you, on that head?

"A. No sir, she was at no time so that I could see the green light, only afterwards, only the time that we met her to pass her.

"BY MR. TURNER:

"Q. As I understand you, the way the range light stood with the masthead lights, if you could have seen a side light you would have seen the red light?

"A. Yes sir.

"MR. WHITNEY: That is what I am trying to get at. "A. Yes sir.

"Q. (Mr. Whitney) Whether her green light was shut off, or not, when you first saw her?

"A. Well, it was shut off all right, with the position of the range lights.

"BY MR. TURNER:

"Q. Who gave the first whistle?

"A. Why, I blowed to the 'Virginian' and got an answer.

"Q. No, but after you got through with the 'Virginian'?

"A. Oh, why, the 'Strathalbyn' blowed me a passing signal, one whistle.

"Q. You saw her before she blew this whistle?

"A. Yes sir.

"Q. Did you see the ship at all, anything more than these lights?

"A. No, I just seen the lights, that was all, sir.

"Q. Had you any idea as to the size of the vessel?

"A. Not until she got abreast of us and then I made her out when she passed us; I made the vessel out then when she passed us.

"BY MR. WHITNEY:

"Q. How far do you think she was away when she was abreast of you?

"A. Well, she was probably a half a mile or more or so.

"Q. And you had passed her before you hauled up on your course for Robinsons? "A. Yes sir.

"Q. That is what you testified to. Did you see her red light at all—the 'Strathalbyn's'?

"A. No sir.

"Q. Were you on the port side after you returned to the scene of the collision?

"A. No sir, I was on the starboard side.

"Q. Did you see her green light then?

"A. Yes sir.

"Q. Did it appear to you to be burning brightly—

"A. (Interrupting) Well, it was—

"Q. (Continuing) —in position?

"A. It was a pretty bright light; it could have been brighter.

"BY MR. TURNER:

"Q. Was it what you would call a passable light?

"A. Yes sir, a good passable light.

"Q. Well, have you any reason to believe the red light was not lit?

"A. No sir, I don't know, sir, whether it was lit. I didn't see any light there at all.

"Q. Did you notice this vessel, was there anything about her, her load or her list or anything, that could obscure one of her side lights?

"A. Well, nothing at all, only the deck-load might

have kept it out of sight, the stanchions or something projecting over the side of the vessel. If it was burning, I didn't see it.

"Q. Did you hear the 'Strathalbyn' whistle for the 'Virginian'? "A. Yes sir.

"Q. How many whistles did he blow?

"A. Well, he blew—he blew one to me, and I answered, and then he waited a little while until he got a little further along and he blowed a whistle for the 'Virginian', didn't get any answer, and then he blowed another one and didn't get any answer, and then the next thing I heard was the danger signals, and I stopped the vessel and turned around and got there as soon as I could, and that is all I saw. I got my boats ready.

"BY MR. WHITNEY:

"Q. Was the green light of the 'Strathalbyn' as good a light as the ordinary oil-burning side light—

"A. (Interrupting) Yes sir.

"Q. (Continuing) —or about?

"A. It seemed to me to be just like an ordinary oil light would be.

"Q. Did you pass the 'Strathalbyn' again that night on your return from Tacoma?

"A. Yes sir, I hailed him again.

"Q. When you came back from Tacoma?

"A. Yes sir, off Browns Point—Robinsons Point.

"Q. Which side did you pass him?

"A. On the starboard side, sir.

"Q. Were you in a position in that passing to see his red light? "A. No sir.

"MR. TURNER: Well, I think about all there is with the witnesses on the 'Flyer' is as to whether the side lights were burning or not. There is not any question so far as the whistle signals were concerned, no contention that they were not blown right on either side.

"Q. (Mr. Whitney) Were the white lights of the 'Strathalbyn' steady lights, or were they unsteady, flare up and go down?

"A. Well, they looked to me to be steady all right, sir.

"Q. Did they appear to you to be as good as you would expect to find in lights that were burning oil?

"A. Well, yes, as good as an oil light would be.

"Q. (Mr. Turner) Did you notice, captain, this headlight and this range light—after the collision, did you notice the lights then, were they burning properly?

"A. Well, I didn't pay much attention to them then, sir. I seen—when I met him off Robinson Point them seemed to be burning all right, coming back, when I met them again; then when I went around to take them off after I left the 'Virginian', that is the only thing I had to go by to find them.

"MR. WHITNEY: Do you want to ask him any more questions?

"CAPTAIN GREEN: No. But I would just like to ask him: Whether you were pretty well abeam of him when you saw this green light?

"A. Yes sir. Yes sir, right abeam, right abeam. Every time I saw the light I was abeam of him. I didn't see it head on. When I came back to Robinson Point the vessel was laying right across the Sound and I seen his light in that position (indicating). I gave two whistles and stopped and hailed him and asked him if I could do anything. He told me no.

"Q. (Mr. Whitney) Passed his stern?

"A. Yes sir.

"Q. Which direction from you was the 'Strathalbyn' when she was first reported to you?

"A. She was about two points on the port bow, sir, two points and a half.

"Q. About two points? "A. Yes sir.

"Q. And how far ahead do you think—how far ahead of the 'Virginian' or yourself at the time you passed the 'Virginian'?

"A. How far was the 'Strathalbyn' off?

"Q. Yes, how far away was the 'Strathalbyn'?

"A. Well, I should judge she might be about a mile and a half or more.

"Q. You don't remember just—

"A. (Interrupting) No sir.

"Q. (Continuing) —what time you passed the 'Strathalbyn' and just what time you passed the 'Virginian'?

"A. I know what time I passed the 'Virginian'.

"Q. You know that because you took your time there at Pully? "A. Pully Point, yes.

"Q. But you would not know just what time you passed the 'Strathalbyn'? "A. No sir.

"Q. You think she was off about two points on your— "A. On our port bow, yes sir.

"Q. And you did not swing back to your course to parallel them, but kept off—

"A. (Interrupting) Clear.

"Q. (Continuing) —more to the right?

"A. Yes sir.

"Q. Now, did I understand you to say that you thought she was about a half a mile away when you were abeam of her? "A. Which, the—

"Q. (Interrupting) The 'Strathalbyn'?

"A. Yes sir.

"Q. And even there you could not see her red light? "A. No sir.

"Q. There could be no obstruction from deck-loads or anything of that kind when the vessel was directly abeam of you?

"A. No, I don't see where there could, myself.

"Q. That is presuming that her lights are adjusted at the end of the bridge as usual, or as any vessel is lighted? "(No response).

"BY MR. HUGHES:

"Q. I would like to know what time you passed the 'Virginian'? You said you—

"A. (Interrupting) 55—7:55, sir.

"Q. And did you take note of the time when the collision occurred?

"A. No sir, I did not. I was too busy getting the vessel around and going back to the 'Virginian' and the other one.

"Q. I would like to ask this question: When the 'Strathalbyn' was first reported to you, how far were you ahead of the 'Virginian'?

"A. Well, we may have been a half a mile or so.

"Q. And in what direction from the 'Virginian'?

"A. She was about seven points on our quarter—seven points.

"Q. On your port quarter?



"A. Six and a half or seven points, yes sir.

"Q. And about when, with reference to the 'Strathalbyn' being reported to you, was it that you observed her range lights?

"A. I had seen them before she was reported to me.

"Q. Well, about how long?

"A. Oh, well, I should say five minutes or more.

"Q. Were you beyond the 'Virginian' when your attention was first called to the 'Strathalbyn', when you first observed her range light?

"A. Well, I was not very far past her, I had not passed her very much before I saw the lights; that is why I kept the vessel out on a course to clear him.

"Q. Well, about where were you from the 'Virginian' when you first saw the range lights of the 'Strathalbyn'?

"A. Well, just past the 'Virginian'.

"Q. I mean which way would she lie from you, how far off and which way?

"A. Which, the 'Strathalbyn'?

"Q. The 'Virginian'?

"A. Oh, she lay—she was going astern all the time. We were the overtaking boat, we were passing her.

"Q. Off on your port quarter? "A. Yes sir.

"Q. And about how far away when you first observed the lights of the 'Strathalbyn'?

"A. Well, it was about a half a mile probably. Now that is as near as I could judge. Of course you can't judge any distance in the night time anyhow.

"Q. You mean, captain, she was falling astern of you? "A. Yes, falling astern, yes sir."

The cross examination of the witness was continued by Mr. Bogle, as follows:

Q. (Mr. Bogle) After Mr. Hayden had finished talking to you about Mr. Crawley's testimony, you were somewhat incensed, weren't you, or somewhat sore at Crawley, you thought he had reflected against your ability as a master? A. Well—

Q. That is the way the testimony struck you, was it?

A. Yes, that is the way it did, and I have the same

idea yet. Put yourself in the same position and see how it would affect you, or any gentleman in the house.

Q. I don't think it would affect me that way, captain, if I was clear and I was passing a vessel and I could not see her lights, that I would get a little excited about it.

A. If a man gets nervous or excited on a ship, and carrying a load of passengers, he had better go somewhere else, not on a steamboat.

Q. You didn't think it was anything unusual by not seeing a port light on the "Strathalbyn" at all?

A. I never took particular notice of it at all.

Q. I say, you didn't think there was anything unusual about that and it never affected you one way or the other, you never thought about it?

A. Never thought about it, no sir.

Q. And after you passed the "Strathalbyn", did you pay any particular attention to the "Strathalbyn" and the "Virginian"? A. No sir.

Q. What attracted your attention to the collision?

A. The collision—when they started to blow whistles I turned around—noticed the danger signal.

Q. Could you see anything then, captain?

A. Well, I could see them come together.

Q. Where were you standing when you saw them come together?

A. I was standing right in the pilot house. I could see through the window, the aft windows.

Q. See through the aft windows?

A. Yes, I did. She was coming around. I slowed down, she was coming around.

Q. Now, captain, prior to the collision, when you were past the "Strathalbyn" or approaching her you were looking out of the pilot house windows, were you?

A. No, I didn't pay any more attention to her until I heard—

Q. (Interrupting) I say, prior to the time when you saw those range lights?

A. I was looking out through them, yes.

Q. Looking through the windows? A. Yes.

Q. The windows were all up?

A. When she blowed a whistle I answered—

Q. (Interrupting) The windows were all up?

MR. HAYDEN: Wait. He said he didn't pay any attention. Did you get that?

A. Windows—about the window part, I don't know whether they were up or down.

Q. You don't know they were up?

A. I know my own window was up all of the time—two of the windows which I looked out of.

Q. You don't know about the other window, do you?

A. No, I don't remember any other windows at all.

Q. And you say now that you didn't put down any windows when you were approaching or passing the "Strathalbyn"?

A. No. When I came to the ship I put down windows—when I came back to the wreck. I wanted to see what I was doing.

Q. You don't remember what windows were up prior to that time, do you?

A. Oh, I remember the windows that I was looking out of was open.

Q. What windows were those, two windows immediately in front?

A. Yes, right in front.

Q. How about the side windows?

A. The side windows, they were up I suppose.

Q. Do you remember—

A. (Interrupting) Never usually taken down at all.

Q. Do you remember clearly now whether they were up or down?

A. No, I don't remember whether they were up or down.

Q. And you made no remark whatever—

A. No remark, no sir.

Q. You didn't even speak to him?

A. I didn't even speak to him, no sir. As a rule I never speak to a quartermaster in the pilot house, or let anybody else speak to the man that is steering a ship; that is a rule on board a ship.

Q. Never to speak to the quartermaster at the wheel?

A. No, only to give him a course.

Q. Never speak to him after that? A. No.

Q. And if any other captain should speak to the quartermaster and remark about lights, that is something unusual, is it? A. Yes.

Q. If you had seen anything unusual about the "Strathalbyn" or her appearance—

A. (Interrupting) I didn't notice anything, no.

Q. (Continuing) —would you have spoken to the quartermaster, would you have said anything?

A. No, I would not say nothing to him.

Q. You didn't notice anything unusual about her appearance at all? A. No sir, not a thing.

Q. You could not make out the ship, could you, captain, tell what size she was?

A. Well, you could see the ship by the range lights, which way she was going, that is all I say, and when he gave me the whistle I answered him and passed right along.

Q. That is all you saw, was the range lights?

A. That is all.

Q. Was that all you saw at any time until after the collision?

A. That is all I saw until after the collision.

Q. You didn't look around to see whether she had a stern light burning? A. No, I did not.

(Witness excused.)

(Filed May 27, 1914.)

#### STIPULATION.

IT IS HEREBY STIPULATED AND AGREED that the affidavit of W. H. Hayden attached hereto may be received and considered as evidence in the above entitled causes. It is also stipulated that Lawrence Bogle may file a counter affidavit.

Dated May 26, 1914.

HUFFER & HAYDEN,

Proctors for Strathalbyn Steamship  
Company, Ltd.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for American - Hawaiian  
Steamship Company.

BALLINGER, BATTLE, HULBURT & SHORTS,  
Proctors for Strathalbyn Steamship  
Company, as Bailee.

AFFIDAVIT of W. H. Hayden.

State of Washington, County of Pierce—ss.

W. H. Hayden, being first duly sworn on oath, deposes and says that he is the W. H. Hayden referred to in the testimony of Frank Walker, a witness for the claimant, AMERICAN-HAWAIIAN STEAMSHIP COMPANY, and one of the proctors for the libellant herein, and has been such since the commencement of this action; that sometime prior to the 14th day of February, 1912, a Mr. Moody, then engaged with the proctors for the AMERICAN-HAWAIIAN STEAMSHIP COMPANY herein, came aboard the steamship "STRATHALBYN" when she was lying in Tacoma Harbor, the affiant then being present, and was asked by Mr. Purdy, the third officer, if he (Mr. Moody) should be permitted to take measurements. This affiant told Mr. Moody that he could not do so, but that he would arrange with Mr. Bogle to have the measurements taken by mutually selected surveyors in order that there would be no controversy about the measurements, and in order that they would be accurate when submitted to the Court; that Messrs. Bogle, Graves, Merritt & Bogle selected Mr. Frank H. Walker and affiant selected Mr. C. P. M. Jack and in some way unknown to affiant Mr. William H. Logan was also called in, and the "STRATHALBYN" was measured by these gentlemen at Victoria; and this affiant was present as was also Mr. Lawrence Bogle when these measurements were made, and the "STRATHALBYN" was at that time in the dry-dock; that the vessel was measured between the iron brackets in the port and starboard light screens on the lower bridge, and that the distance then gotten between those iron brackets was 46' 10"; that the vessel was also measured about 8 feet forward of the house between her rails, and that the distance then gotten was 46' 7½"; that affiant and Mr. Lawrence Bogle of the firm of Bogle, Graves, Merritt & Bogle, agreed that after the measurements were taken and after the



surveyors had agreed to them, that a plat should be made showing the measurements taken, the two measurements above mentioned being only a part of those taken at the time; that said plat should contain all the measurements then made, should be certified to by the surveyors, and should be filed as the evidence of the measurements in this case, and that a copy of the blue print should be furnished for both Mr. Bogle's and affiant's use, but affiant refused to deliver such incorrect copy except on the conditions herein stated and the ground that affiant assumed, when making such arrangement, that the blue print would be correct. That, after the measurements were taken, Mr. Lawrence Bogle, Mr. Frank H. Walker and affiant returned from Victoria to Seattle and Tacoma, respectively; that something like a week or ten days before the "STRATHALBYN" left for Australia after she was repaired and reloaded, which, as affiant remembers, was about the 20th of March, 1912, a tracing and blue print were brought into his office, according to affiant's recollection, by Mr. C. P. M. Jack. This tracing and blue print were rolled up together and enclosed in a paper wrapper and affiant was then informed that the package contained the surveyor's report of the measurements at Victoria, and that said package was left unopened on affiant's desk until after the "STRATHALBYN" left, affiant being constantly engaged in court and principally with the "STRATHALBYN" case between the time the said package was left with him until after the "STRATHALBYN" left, and never having any suspicion there was any error in the measurements; and when affiant opened the said package, probably a few days before the 13th day of April, 1912, he found but the original tracing which is introduced in evidence in this case as "Libelant's Exhibit 'X' 14" and the blue print, which is introduced in evidence in this case and is identified as "Claimant's Identification '5-5'"; affiant found but the original tracing and one blue print, although he expected to find several blue prints, and thereupon took the tracing to Engineer Nicholson's office in the Fidelity Building to have blue prints made from it in order that he might have one copy for his office use and one copy

for Mr. Bogle's office use; that after the said blue prints had been made, affiant personally started to copy in the measurements that had been written in, in ink upon "Claimant's Identification '5-5' ", that is, the blue print, and then for the first time discovered what appeared to be an error therein, in that instead of the measurement 46' 10" being shown as between the iron brackets in the light screens, it was shown to be from the outside of the end blocks of the light screens; that the blocks in the ends of the light screens were  $4\frac{1}{2}$  inches on each screen. That the surveyors at Victoria had estimated the distance between the lights to be 47' 7"; that when the measurements were about to be made, the "VIRGINIAN'S" surveyor in Victoria suggested that the outer edge of the block in the forward end of the light screen was equivalent to the center of the flame of the lamp. That affiant believed the rule to be that the outer edge of the block in the light screen was equivalent to the inside edge of the wick. In order to avoid a discussion on this subject, as there was no way to settle it at hand at that time, affiant suggested that the measurement be made between the iron brackets upon which the lamps fitted, so that the true measurement between the flames could be obtained by adding to the distance between the iron brackets the actual distance from the flame to the outside of the lamp which would give the exact distance between the in-board edge of the wicks of the lamps, and this suggestion was finally agreed to and the measurement of 46' 10" was obtained accordingly. The lamps were not available for measurement because they were then on exhibit in evidence in Tacoma. When affiant discovered the apparent error in the blue print, he called the same to the attention of Mr. Lawrence Bogle and requested that he see Mr. Walker to have the same corrected. Mr. Bogle agreed to put the matter before Mr. Walker, and affiant went to Seattle with the blue print and tracing above referred to marked respectively "Claimant's Identification '5-5' " and Libellant's Exhibit 'X' 14" and met Mr. Walker with Mr. Lawrence Bogle at Mr. Bogle's office and informed Mr. Walker that the blue print was erroneous, in his belief, in that the measurement of 46' 10" was indicated to be between

the outside of the blocks instead of between the iron brackets. Mr. Walker asserted that he knew of no mistake in the blue print, and affiant laid out the blue print and the tracing on the desk and asked Mr. Walker to look at it, which Mr. Walker did, but refused to make any correction or in any manner to admit that there was a mistake in the blue print and asserted that he had been treated shabbily because he had not been given a copy of the blue print signed by the surveyors, and that he would not make any change in the blue print or have anything more to do with the matter until he was furnished with a copy of the blue print; that affiant never agreed or arranged, before this interview, to give Mr. Walker a copy of the blue print and does not know of any such arrangement having been made by anybody; and affiant being unable to accomplish anything with Mr. Walker, refused to deliver to Mr. Bogle a copy of the blue print, asserting that he would not place it in circulation where it might be used among adjusters or others interested in the case when it was incorrect, but did offer to give a copy of the blue print to Mr. Bogle provided he would give affiant his personal assurance that it would be used for no purpose except he might introduce it in evidence in the case subject to explanation. That at either the meeting above referred to or one shortly afterwards, Mr. E. C. Hughes, who was then associated with Mr. Bogle in the case, was in Mr. Bogle's office and Mr. Bogle told affiant he would consider that proposition with Mr. Hughes, Mr. Hughes being in another room of the office; and after Mr. Lawrence Bogle spoke to Mr. Hughes about it, both Mr. Bogle and Mr. Hughes told affiant they would not accede to affiant's condition, and thereupon affiant refused to deliver a copy of the blue print to Mr. Bogle on the ground that it was incorrect, and he would not permit an incorrect document to go forth in circulation without explanation, which explanation affiant would have opportunity to make if the copy were attempted to be introduced in evidence. That afterwards affiant did deliver to Mr. Bogle a copy of the blue print with a letter written thereon in order to again have Mr. Walker consider the error, but this affiant was not advised that

Mr. Walker had reconsidered the matter before his testimony was taken. That affiant had no knowledge, suspicion, intimation or suggestion that the blue print was not correct until after the "STRATHALBYN" had gone to sea, and did not look at the blue print or tracing until after the "STRATHALBYN" had gone to sea, and only discovered what he considered and believes to be an inaccuracy through his personal examination of the blue print, when engaged in copying the figures thereon onto the copy of the blue print which he intended to send to Mr. Bogle. That affiant's recollection of the measurements taken was absolutely clear, and for that reason the error became immediately apparent to him when he started to copy the blue print.

W. H. HAYDEN,

Subscribed and sworn to before me this 27th day of May, 1914.

(Seal)

F. A. HUFFER,

Notary Public in and for  
the State of Washington,  
residing at Tacoma, Pierce  
County, Washington.

(Filed May 28, 1914.)

#### CLAIMANT'S AND CROSS-LIBELLANT'S TESTIMONY.

CAPTAIN JOHN S. GREEN, produced as a witness on behalf of RESPONDENT and CROSS-LIBELLANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (MR. HUGHES) Give your full name, captain.

A. John S. Green.

Q. What is your business?

A. Ship master and mariner.

Q. How long have you been a ship master?

A. Fourteen years.

Q. What is your age, captain?

A. Forty-four.

Q. How long have you been master of the steamship "Virginian"? A. About a year and a half.

Q. The "Virginian" is an American ship, registered at the Port of New York? A. Yes sir.

Q. What is her tonnage, gross and net?

A. 5,077 net; 9,904 gross.

Q. Tons? A. Tons.

Q. What are her dimensions?

A. 492 feet long; 58 feet 3; 31 feet 9.

Q. What is her carrying capacity?

A. 11,000 tons.

Q. In what trade is she engaged.

A. She is engaged in trade between the ports of San Francisco, Seattle, Hawaiian Islands and Mexico.

Q. She connects with the Tehuantepec Road, don't she? A. Yes sir.

Q. And makes the trip along the Pacific Coast to Seattle and across to the Hawaiian Islands?

A. Yes sir.

Q. Belongs to the American-Hawaiian Steamship Company. A. Yes sir.

Q. On what voyage was she engaged at the time of the collision with the "Strathalbyn"? A. Voyage 26.

Q. I mean for what port had she started and on what—

A. (Interrupting) The voyage started at Salina Cruz and had stopped in San Diego, San Francisco, Seattle.

Q. And you were then in the ports of Puget Sound for cargo, intending to complete your voyage to the Hawaiian Islands; is that right? A. Yes sir.

Q. Did you have any cargo aboard on the evening of January 12th when the collision occurred?

A. Yes sir.

Q. Were you aboard the ship that night?

A. Yes sir.

Q. Who was your pilot? A. Duffy.

Q. At what hour and at what dock did you leave the city of Seattle for Tacoma?

A. Left the Oriental Dock at 6:45 for Tacoma.

Q. I wish you would state about what time you had Pully Point light abeam?

A. Pully Point light abeam at 7:53.

Q. Were you on deck at that time A. Yes sir.



Q. Did you observe whether she changed her course any in rounding Pully Point—swung out?

A. No, not in rounding, before that—before we arrived at Pully Point we had hauled out.

Q. Had hauled out. So as to give further clearance? A. Yes.

Q. About how far were you off Pully Point when you passed it? A. Must have been a half a mile.

Q. Do you know whether she took her course for Robinson Point when she was at or nearly abreast of Pully?

A. Yes sir, she was hauled in again three quarters of a point.

Q. Did you observe the steamer "Flyer" at about the time you were at Pully Point? If so, state what you saw—

A. (Interrupting) Before the ship arrived at Pully Point I observed the "Flyer" coming up on our port quarter.

Q. Then state what you observed as to the "Flyer"?

A. Passed over to the starboard side and ran on the quarter, blew one whistle, which we answered; then she passed ahead, that is, she slowly passed along ahead, but seemed to haul out a little more from us.

Q. When she was abeam of you about how much clearance was there between you, according to your best judgment? A. Why, I should say about 200 feet.

Q. And she kept spreading out then? A. Yes.

Q. Away from you. How high is your bridge?

A. That is the bridge itself?

Q. Yes.

A. 40 feet; that is at that time it was 40 feet above the water.

Q. With the condition of your load your bridge was 40 feet above the water? A. Yes.

Q. How was it with reference to the "Flyer's" bridge, for example?

A. Oh, the "Flyer" was—we must have been 25 feet above the "Flyer".

Q. That is, a person on your bridge would be 25 feet above a person on the "Flyer's" bridge; is that what you mean?

A. Well, it would be more than that; a man's head, it is about 47 feet, 46 feet above the water.

Q. Now, after the "Flyer" had passed you, what whistles if any did you hear?

A. I didn't hear any whistle at all.

Q. Where were you, what had you done after observing the "Flyer"?

A. I had left the bridge after the "Flyer" passed us, when I saw the ship haul on her course for Point Robinson.

Q. What did you do?

A. I went below for a few minutes.

Q. Captain, go on and tell what occurred without your sight or hearing and what fell under your personal observation from that time until the collision?

A. Well, I was below. I believe about three minutes when I heard the telegraph ring, that is, I could hear the movements of the telegraph to the engine room. I rushed up on deck—

Q. (Interrupting) When below you mean—

A. (Interrupting) I was in my stateroom. I went up—went out on deck, went up on the port side, saw the third mate at the telegraph, and I says, "What's the trouble?" He says, "There's a vessel ahead that we can't see her lights"—

MR. HAYDEN: (Interrupting) I object to that conversation. I move to strike it out.

Q. (MR. HUGHES) Go right on.

A. I asked him what the trouble was and the answer was that there was a vessel ahead.

MR. HAYDEN: Same objection.

A. He says, "We can't see his lights, we can't tell in what direction he is going." I then walked over to the starboard side on the bridge while looking ahead, and by the time I got over there I heard the pilot order the third officer to put the telegraph full speed astern.

Q. What was the signal—telegraph signal that you heard before? A. Stop the engines.

Q. And what are those signals, what signal?

A. Well, there is a dial on the face of the telegraph.

Q. You can tell from the sound of it which it is, whether it is a stop or go full speed astern?

A. No, you can't tell that—see by the dial.

Q. Well, now proceed. What occurred after that?

A. When I heard this pilot order "Full speed astern" I went over to see if the officer had obeyed and I saw that he had. I was looking ahead, and a little while afterwards, I should say about two minutes, I heard four blasts off the whistle from seemingly right ahead. I ordered the third officer to blow three whistles, signifying that we were going full speed astern.

Q. Did he do so? A. Yes sir.

Q. Now, up to that time had you been looking ahead to try to locate the vessel that was giving these whistles?

A. Yes sir.

MR. HAYDEN: Objected to as leading.

Q. What if anything did you see?

A. I saw the light on Brown's Point—or Robinson Point, and saw the "Flyer's" lights. I could see no other lights.

Q. What occurred after that?

A. Shortly after I had blown the three whistles we came together—the two ships.

Q. What observation were you able to make of the ship ahead of you, which was afterwards found to be the "Strathalbyn", prior to the collision?

A. No observation at all. I could not see the vessel at all.

Q. Well, when did you first see the loom of the hull of the vessel—the "Strathalbyn," I mean?

A. Well, I made out the loom of the vessel just as we backed off, as we were backing away from her I could see the loom of the vessel.

Q. How far was the bridge where you were standing back of your bow—stem?

A. About 200 feet.

Q. What kind of a night was it?

A. A dark night. No fog.

Q. Overcast? A. Overcast, cloudy, yes.

Q. Rained shortly afterwards? A. Yes.

Q. As nearly as you could tell from your position, then, how did those two vessels appear to come together, and what did you observe as you backed away?

A. Well, according to my observation it seems that

the "Strathalbyn" struck us on the starboard bow pretty near end on. The ship took a list to port.

Q. Your ship?

A. Yes, but she backed right away, that is the both vessels went apart instantly practically. After we had backed off a little distance and I had stopped the ship and the "Strathalbyn" had swung broadside to us, looked to me as if she was working her engines ahead to go around to Tacoma, I could see her red light very dimly—the "Strathalbyn's".

Q. About what was your position with reference to the beam of the "Strathalbyn" at the time you saw her red light?

A. Well, we were pointing pretty near towards her beam then, that is, we were practically at right angles to her.

Q. Did you then or at any time after the collision observe any other lights on the "Strathalbyn"?

A. Yes, after we had started ahead slowing and got parallel to her I could see what I supposed to be her range lights aboard of her, that is, a masthead light and after range light; that is, from the position of these two lights I would take them to be a forward masthead light and an after range.

Q. As I understand, in the testimony of the "Strathalbyn" she didn't in fact have an after range light—

MR. HAYDEN: (Interrupting) I object to that as leading and suggestive to the witness.

MR. HUGHES: Let me put my question and then you can make as many objections as you like.

MR. HAYDEN: I prefer to make it right in there.

MR. HUGHES: No, but you can't, that is all. I will repeat it as often as you do, because I am going to ask my questions.

MR. HAYDEN: You have got my objection, Mr. Hughes. Go ahead in your own way.

MR. HUGHES: I will start over again. You can make your objections to my questions, I don't want to stop that, but what I object to is your interrupting me in the midst of a question.

MR. HAYDEN: I think I had a right to, under

those circumstances. I wish to preserve my objection right where I put it.

MR. HUGHES: It will be perfectly useless, it will cumber the record. I am going to ask my questions.

MR. HAYDEN: I will make it this way and avoid encumbering the record, that my objection will be considered as made, if you make that statement.

MR. HUGHES: Your objection will have to be considered as made.

Q. (MR. HUGHES) Captain, the officers of the "Strathalbyn" have testified before the inspectors that in fact they did not have range lights. Now I ask you—

MR. HAYDEN: (Interrupting) Same objection.

Q. (MR. HUGHES, continuing)—in the light of your experience as a navigating officer, with familiarity with lights that are usually carried on board ship and used on board ship, what explanation you have to offer as to the lights that you saw that night, assuming that there was no light on the "Strathalbyn's" mainmast, what other lights could you have mistaken for the range lights?

MR. HAYDEN: Same objection as—

A. (Interrupting) There might have been a light on her bridge.

MR. HAYDEN: Just a minute, please. Same objection, as leading and suggestive and irrelevant and immaterial.

A. Might have been— I might have taken her forward light for a forecastle headlight and a light on the bridge for an after range light. These lights were not steady, they would flicker up and lower down as if something came in their way and obscured them for a while—like that.

Q. You mean, I take it, that you might have taken the lights in the forecastle head for the forward light?

MR. HAYDEN: I object to that as leading and suggestive. A. Yes.

Q. Well, go on and state what occurred after this time?

A. Well, laying at nearly right angles to each other, the "Flyer" passed the "Strathalbyn" and came to us and



asked if we wanted any assistance. I says, "No," but I asked him how the other fellow was—

MR. HAYDEN: (Interrupting) I object to that as incompetent and hearsay.

Q. (Mr. Hughes) Go on.

A. From what I could understand he said he was all right.

MR. HAYDEN: Same objection.

A. And he proceeded away to Tacoma. By that time the "Strathalbyn" had gotten straight around towards Brown Point—or Robinson Point, and we followed her closely, stopping and going ahead, just to keep about abreast of her, until she got pretty near to Robinson Point.

Q. Then what did you do?

A. As she made no call or made any sign of wanting assistance, we proceeded to Tacoma, arriving there about 10:45, I should judge.

Q. Captain, now going back to the time when you came on the bridge after hearing the signal to stop your vessel, did you observe the "Flyer"? A. Yes.

Q. About what position did she occupy on the water there with reference to the "Virginian"?

A. She was about three points on the starboard bow.

Q. And about what distance?

A. Well, I should think she was about a thousand feet ahead of us.

Q. When, with reference to your coming upon the bridge, was the signal given your ship to go full speed astern?

A. Well, I can only judge by walking—coming up, walking across the bridge; I walked across the bridge and asked the officer what was the trouble, and then walked to the starboard side, and when I got over there, why, the pilot had said "Full speed astern." Well, I should think it would not take more than thirty seconds, anyhow, at the most.

Q. Did you, after coming in deck, hear any signal blasts from a vessel apparently ahead of you somewhere?

A. No, sir, none.

Q. You didn't hear a single blast at all?

A. No, sir.

Q. The only blasts you heard were the—

A. (Interrupting) Were the four blasts.

Q. Four blasts? A. Yes.

Q. How long was your ship going astern before the collision occurred, according to your best judgment?

A. I should think about two minutes.

Q. What is the speed of your ship?

A. The speed she was making that night was about eleven knots. She goes fourteen or fifteen, for that matter. Going under two boilers was all.

Q. About how long had your engine been stopped before the signal to go full speed astern?

A. I should think about a minute.

Q. From your experience with that ship, when you were going that way, stopping a minute and then running full speed astern for two minutes, how much headway would she have left?

A. I don't think she had any headway at all, because loaded with 11,000 tons of sugar or cargo I can stop her in five minutes.

Q. Stop her from full speed ahead to full speed stern? A. Yes.

Q. Is she a twin screw? A. Yes.

Q. Were both your screws in the reverse of the engines? A. Yes, sir.

Q. How would she back, assuming that the wheel was not changed?

A. Well, ordinary conditions she backs just straight.

Q. Well, as the conditions were that night?

A. She would back straight, very little way.

Q. From your observation, what would you say as to the way she backed?

A. According to my observation she backed straight, that is, from the appearance of Point Robinson light afterwards and before the collision.

Q. Did you remain up until the "Strathalbyn" came in, after reaching Tacoma?

A. Well, it set in raining, thick rainy. Well, I was

in the office there until twelve o'clock, but I don't know when she came in. I saw her the next morning.

Q. Did you see her the next morning?

A. Yes, sir.

Q. Did you go aboard of her? A. Yes, sir.

Q. Did you go alongside of her? A. Yes, sir.

Q. Did you observe her deckload? A. Yes, sir.

Q. From the water alongside? A. Yes.

Q. How did her forward deckload appear?

A. Her forward deckload looked to me to be on a level with her lower bridge.

Q. Did you see the stanchions that held the forward deckload? A. Yes, sir.

Q. What sort of stanchions were they?

A. Well, they looked to me to be about 6 by 8, something like that.

Q. Were they the same level or higher or lower—

A. (Interrupting) No, they were four feet higher than the deckload.

Q. She had no lights on her the next day when you saw her, of course?

A. No. She had a glass globe up in her upper light-box; that is, it looked like—to me like an electric globe but no glass there, no red or green glass, no lamp; had what looked to be an electric light up in her upper light-box. Down in the lower light-box there was nothing there at all.

Q. You are speaking now of the side lights?

A. Side light-boxes, yes—screens.

Q. These upper side lights that looked to you as electric lights—I mean light globes, were on what bridge? A. On her upper—flying bridge.

Q. And the lower screens that you speak of were on what bridge?

A. The lower bridge, on her boat deck—it is what we call a boat deck. She didn't have any boats there, her boats were further aft; but that is her lower bridge.

Q. How did this deckload appear with reference to those lower screens?

A. Well, they looked to be about on a level with it.

Q. How did the stanchions appear with reference—

A. (Interrupting) The stanchions appeared higher.

Q. Well, how with reference to parallel lights, did you notice that?

A. Well, I didn't notice that. Looked to be right in front of the lights, right along the whole length of the ship.

Q. From where you were on the water could you tell where these screens were located with reference to the end of the bridge, how with reference to the ship's rail? A. No, I could not.

Q. Did you see how the cargo was with reference to the side of the rail, as to whether it was flush with it or not—the forward cargo?

A. Well, the cargo was out to these stanchions, that is all I noticed—was hard up against those stanchions.

Q. You saw no light, lamp or no arrangement—provision for any lamp on the masthead other than the electric globe that you have spoken of?

A. That is all; I saw the electric; there is a regular electric masthead light up there, also an after range light up there too, with a plate stuck in front of it, about seven inches high.

Q. That was on the mainmast? A. Yes, sir.

Q. Were there any fore-stays from the foremast down to the masthead—or down to the bow of the ship I mean? A. No.

Q. What stays were there?

A. No stays there, because they had been carried away in the collision.

Q. Oh, they had been carried away.

A. That is the lower end of them were carried away. There was a masthead—up the masthead I suppose were fast there, I didn't notice particularly about that.

#### CROSS EXAMINATION.

(Mr. Hayden) Captain, have you got the ship's log here? A. No.

Q. Where is it? A. On board ship.

Q. I wish you would produce both the ship's log and the engineer's log. Have you seen the ship's log and the engineer's log since this accident. A. Yes.

Q. Do you know what those logs contain, a report of this accident?

A. Yes, I do. I know what the mate's log contains, because I signed it.

Q. Did you sign the engineer's log?

A. No, I didn't sign the engineer's log.

Q. Have you seen the engineer's log since the accident? A. Well, I have, yes.

Q. You have read it, have you? A. Some of it, yes.

Q. In connection with this accident?

A. Yes, I think I have.

Q. What does it say about the time your ship stopped with respect to the time of the collision?

A. I don't understand what you mean.

Q. How long before the collision?

MR. HUGHES: This is not cross examination. I object to it as not cross examination.

Q. (Mr. Hayden) How long before the collision, as reported in the engine room log, is it recorded that they received a bell to stop her?

A. I don't remember that. I didn't pay much—

Q. (Interrupting) Have you any idea?

A. I think about three minutes. I would not say for sure, but I think so; I don't remember much about the engineer's log because that don't—

Q. (Interrupting) You were not interested in the engineer's log?

A. Well, I am interested in it, yes, but not as much as I am—

Q. (Interrupting) Didn't you notice the engineer's log very closely after this accident, as master of this ship? A. Yes.

Q. But you don't remember anything it said about that? A. Yes, I remember some things it said.

Q. What does it say?

A. Well, it says that 7:59 a collision occurred, if I am not mistaken.

Q. And what time does it say that the bell was given "Full speed astern"? A. 7:58, I think.

Q. 7:58. And yet it says 7:59, does it?

Q. (Interrupting) Isn't it a matter of fact that the engine room log—calling your attention now—reads like this: "Full astern 7:58"—that is as you recollect it, is it?



G. Go ahead, read on, I can tell you then maybe.

Q. I say, "Full astern, 7:58"—is that the way you recollect it? "Ahead slow 8:09 p. m." "Came into collision with 'Strathalbyn' at 7:58 p. m."?

A. I was not sure about that.

Q. Do you remember that? Don't you as a fact remember that your "Full speed astern" and your collision is recorded in the engineer's log as being at the same time? A. No, I don't.

Q. Are you as clear and positive about all of your testimony as you are about your recollection in connection with your reading this engineer's log? A. Yes.

MR. HUGHES: I object to that as not cross examination and as incompetent and irrelevant.

Q. (Mr. Hayden) Is there a record in your engineer's log that you stopped at all, gave one bell and stopped? A. Yes.

Q. You are sure of that, are you? A. Sure.

Q. What time was that bell given to stop?

MR. HUGHES: I renew my objection. This is not cross examination.

MR. HAYDEN: This captain is on here, he is testifying how this collision happened.

MR. HUGHES: I know, but he did not testify to any log.

MR. HAYDEN: He testified about his bells.

MR. HUGHES: It is not necessary to argue a proposition that is so perfectly self-evident, necessarily, to a lawyer or a judge.

(Question read).

MR. HUGHES: You asked the captain for his recollection now.

MR. HAYDEN: No, I am asking his recollection as to having read the engine room log. I have a right to know the accuracy of his recollection.

MR. HUGHES: Then you are calling for his recollection, not for the contents of the log?

MR. HAYDEN: His recollection of the contents of that log is what I want to get at.

MR. HUGHES: I object to that as not cross examination. (Discussion).

Q. (Mr. Hayden) Now, will you answer me, captain? A. What is the question?

Q. Whether or not you recollect the engineer's log book shows that they received a bell or signal to stop prior to this accident, at about the time of the accident?

A. I said yes.

Q. Well, I ask you what time that signal was recorded, if you remember, in the engineer's log?

MR. HUGHES: Same objection.

A. I don't know whether it was recorded in his log. I am not down the engine room to tell when it was recorded.

Q. (Mr. Hayden) I mean the time recorded as having received the signal?

A. Well, as near as I can recollect now it was 7:57 or 7:56.

Q. Yes, and now as near as you can recollect now when was the signal given—I mean when was the signal recorded in the engineer's log to go full speed astern?

A. 7:58.

Q. And as near as you can recollect, now, what does the engineer's log say about the time of the collision?

A. 8 o'clock.

Q. That is as near as you can recollect, is it?

A. Yes.

Q. If I were to call your attention to the fact that the record of the engineer's log showed at 7:58 p. m., does that refresh your recollection at all—that you came in collision? A. No, it would not, that is, about that.

Q. And your mind is a blank except you have an impression it was eight o'clock, you are not sure about the time of the collision?

A. I read the log over, surely, but I had two or three other times to keep in my mind and think about that I didn't particularly—I had the log to look at, at any time I wanted to.

Q. Yes, I know you did, that is what I am asking you about it for.

A. Well, I say I don't exactly know about those one or two minutes, then, in the log book, or the time of it. It may have been 7:58 when we stopped and it may have been 7:59. The thing is on record there.

Q. Now, you left Seattle when?

A. We straightened out at 6:45.

Q. Under way. What is the first point that you passed after leaving Seattle on your way to Tacoma?

A. Alki Point.

Q. What is the next point you passed before this collision? A. Pully Point.

Q. What time were you abreast of Alki Point?

A. I don't remember now exactly what time it was.

Q. What time were you abreast of Pully Point?

A. 7:55.

Q. How does your ship's time compare with the time on shore, do you know?

A. Why, I think it compares—

Q. (Interrupting) How did it do at the time of this accident?

A. I think it compares with Seattle time, that is, ordinary time. The third mate's watch was keeping the time of these entries in the log book—the bridge log book—the third officer's watch.

Q. Do you know whether that is Seattle time or whether there is a deviation in ship's time between Seattle time?

A. No, generally in port here we keep Seattle time.

Q. The "Flyer" overhauled you and was abeam of you before you got to Pully Point? A. Yes.

Q. How long before?

A. Oh, shortly before, pretty near—well, very little time before. She passed us—she was going a good deal faster than us, but still she was not gaining so much, because she passed us practically at Pully Point or a little before.

Q. Passed you before you got to Pully Point?

A. Just about off Pully Point.

Q. Do you know how fast the "Flyer" was going?

A. No, I do not.

Q. She was going by you quite fast, though, wasn't she?

A. Well, quite a little—she was going two or three knots faster than we were.

Q. I want to know if she passed you when you had

Pully Point abreast of you or whether she passed before you got to Pully Point?

A. She passed us about off Pully Point.

Q. About off? A. Yes.

Q. Well, which way?

A. What do you mean, which way?

Q. Towards Seattle—were you towards Seattle when she passed you, to towards Tacoma, from Pully Point, when she passed you?

A. We were about off Pully Point, about off Pully Point.

Q. That is as near as you can tell then?

A. Yes, saying Pully Point was here and we were here and here was the "Flyer," just about abreast (illustrating).

Q. And you passed Pully Point off about a half a mile? A. About a half a mile, yes.

Q. And the "Flyer" passed you on the starboard side—on your starboard side? A. Yes.

Q. About how far was the "Flyer" from you when she passed you?

A. About 200 feet, I should think.

Q. Came up abreast of you? A. From the looks.

Q. About 200 feet? A. Yes.

Q. Had you changed your course for Robinsons Point at the time the "Flyer" passed you?

A. Just about as the "Flyer" passed us we hauled up for Robinson Point.

Q. Were you on the bridge at that time? A. Yes.

Q. Were you on the bridge when they hauled up for Robinsons Point? A. I was on board when the "Flyer" passed us.

Q. Were you on the bridge when they hauled up for Robinson Point? A. Well, I would not say that.

Q. Do you remember your hauling up for Robinson Point? A. No, I won't say I know it.

Q. Did you see any vessels ahead of you before you went below at about Pully Point?

A. Yes, I saw the "Flyer".

Q. Did you see any other vessels ahead of you before you went below at Pully Point? A. No sir.

Q. Did you see Robinsons Point? A. Yes.

Q. Before you went below at Pully Point?

A. Yes.

Q. Did you see Robinson Point before you got to Pully Point?

A. Well, I just came out on deck then when the "Flyer" passed; we were at Pully Point; I saw Robinson Point then.

Q. When did you come out on deck, when the "Flyer" whistled?

A. No, when the "Flyer" was coming up astern, she was just coming up astern passing over on our starboard quarter.

Q. So then you must have seen Robinson Point light before you got to Pully Point, as the "Flyer" had overtook you and passed you?

A. Well, I didn't look for it, but I looked for it just before I left the bridge.

Q. You did? A. Yes.

Q. Did you see any other lights off towards Robinson Point light that could be taken for the lights of steamers, before you left the bridge? A. No.

Q. You didn't. Did you hear the "Flyer" whistle to a vessel ahead of you? A. No sir.

Q. Did you hear any whistles from the "Strathalbyn" prior to the danger signal? A. No sir.

Q. Did you hear the "Strathalbyn's" danger signal?

A. Yes sir.

Q. Where were you when you heard it?

A. I was on the starboard side of the bridge, forward of the "Virginian".

Q. On the starboard side of the bridge of the "Virginian" and forward when you heard—

A. (Interrupting) Starboard side of the bridge of the "Virginian," looking forward, when I heard it.

Q. And your vessel was not going astern at that time? A. Yes sir, she was.

Q. Full speed astern at that time? A. Yes sir.

Q. How long had you been on the bridge before you heard the "Strathalbyn's" danger signal?

A. About two minutes and a half, I should judge.

Q. About two minutes and a half. And you didn't



hear any whistles from the "Strathalbyn" except her danger whistles? A. No sir, that is all.

Q. So that there must have been two minutes and a half lapsed between the last whistle of the "Strathalbyn" and her danger whistle—

A. (Interrupting) Oh, I don't say anything about that. I said I didn't hear any whistle between there.

Q. You were on the bridge two minutes and a half?

A. That is what I should judge from the time that we—from the time I came on the bridge until we—yes, practically until I heard the—until the danger whistle.

Q. Practically—what do you mean by "practically"?

A. Well, I mean to say that is as near as I can judge to the time.

Q. That you came on the bridge just as they blew the danger whistle?

A. No, I say from the time I was on the bridge until they blew the danger whistle, I should think it was about two minutes and a half.

Q. Oh. And your vessel was making eleven knots an hour. A. Yes, about eleven knots.

Q. When you spoke of reversing your vessel and stopping her inside of five minutes, you had up full steam then?

A. Well, I will tell you, we generally run on two boilers, on an economical speed, that is, that is our economical speed—two boilers.

Q. I am talking about the time you say you have reversed her in five minutes?

A. From full speed ahead to—

Q. (Interrupting) Is that with two boilers?

A. Yes sir.

Q. That is on two boilers, the same as you were running that night? A. Yes sir.

Q. And that is on—about fourteen knots she makes on two boilers?

A. No, she don't make fourteen knots on two boilers. She makes about fourteen knots on four boilers.

Q. You ordinarily run her, for economical speed, then, on two boilers, is that it? A. Yes.

Q. Now, after you came on the bridge you asked

Mr. Duffy what the matter was; is that as I understood it? A. No, I asked the third officer.

Q. You asked the third officer "What is the matter here?"? A. What was the trouble.

Q. And what did he say?

A. He said "There is a vessel; we can't see in what direction she is going."

Q. Did he report to you having heard any whistles?

A. Report to me?

Q. Did the third officer tell you that he had heard any whistles from the vessel ahead? A. No.

Q. He did not?

A. I don't remember him saying that.

Q. Did Mr. Duffy report to you of having heard any whistles of a vessel ahead?

A. No, I don't think so.

Q. Did they give you any indication to know how they knew a vessel was ahead?

A. I don't remember now whether there was any mention of whistles made or not.

Q. So when you came on the bridge you didn't know whether there was a vessel had given you the signal to pass to the port or starboard, did you? A. No sir.

Q. You said, before the inspectors, that you saw the red light some distance away—the "Strathalbyn's" red light some distance away. Do you remember how far?

MR. HUGHES: Wait a minute.

A. No—

MR. HUGHES: Wait a minute. I object to that as incorrect and untrue, in point of fact, and not proper cross examination.

A. I said I saw the "Strathalbyn's" light a short distance away—red light, after it was abreast of us.

Q. How far did you say that was?

A. Well, I should say it was about 200 feet.

Q. Why do you change it now, say 200 now?

A. Well, I didn't give any distance before, I don't think. I don't remember, I may have.

Q. Do you remember this question being asked you, at the inspector's office: "You hadn't seen the side light before?" And your answering it "No sir," and the

question "And this was after you had backed away how far?" And you answered "Oh, I should judge 400 feet off." Do you think that you may have given that testimony before the inspectors?

A. Yes, I think likely I gave that testimony.

Q. Now, having recalled your mind to that statement at that time, do you think that you were 400 feet off now, or do you wish to make some correction of that?

A. Well, I would make it between two and 400 feet; that is quite a short distance.

Q. And you could see the red light 400 feet away then—between two and 400 feet?

A. Yes sir—in that position that she was at that time.

Q. Yes, I understand. And you saw her headlight when after this collision?

A. I saw what I took to be her headlight after we had paralleled her course.

Q. Didn't you see her headlight immediately after the collision? A. No sir.

Q. Did you see her headlight immediately before the collision? A. No sir.

Q. Did you see her headlight at all?

A. What I took to be her headlight, yes, after we had backed away and she got straightened out towards Tacoma and I was parallel to her, that is—

Q. (Interrupting) Have you any doubt but what it was her headlight?

A. Oh, well, I am in doubt, yes, whether it was.

Q. You are in doubt? A. Yes.

Q. What raises that doubt in your mind?

A. What raises that doubt? What raises the doubt in my mind is because she had what I took to be an after range light, and I find out from the captain's testimony he had no after range light.

Q. I am talking about what you saw at the time.

A. That is what I say, that is the reason—that is what put it in my mind to doubt it; but I had no doubt then.

Q. That it was her masthead light?

A. That I thought it was her masthead light.

Q. At that time you had no doubt about it at all,

it was located in about the position you would expect to find a masthead light on a ship of her size, was it?

A. That was the only white light so elevated; that is the reason I took it to be a masthead light. Above these other lights I saw on deck.

Q. When did you see these other lights on deck?

A. I saw two or three other lights around on deck, several people were walking with lights.

Q. Were those the lights you took to be the range light?

A. No, the other lights—there was an elevated light aft.

Q. How far aft?

A. Well, I should think it would be 200 feet.

Q. 200 feet aft—

A. (Interrupting) Yes.

Q. (Continuing) —of the light that you took to be her masthead light? A. Yes.

Q. Was it elevated above the masthead?

A. Yes, seemed to be elevated above the forward light.

Q. And this was after you had straightened out?

A. Yes.

Q. And were both coming towards Tacoma?

A. Yes sir.

Q. And you were on her starboard side?

A. We were on her port side.

Q. You were on the starboard side of the "Strathalbyn" when you were coming to Tacoma?

A. We were on the port side of the "Strathalbyn".

Q. Did you come to Tacoma on the port side of the "Strathalbyn"? A. Yes.

Q. Where did you leave her and go to the starboard side?

A. We didn't go to the starboard side at all.

Q. How did you get across her at Robinsons Point? She went in to Robinsons Point.

A. I know she went in to Robinsons Point. We passed her on the port side. We were always on her port side.

Q. On her port side? A. Yes.

Q. You were always on her port side?

A. Always on her port side.

Q. This light that you took to be the masthead light, what kind of a looking light was that?

A. Well, it was a white light.

Q. Bright light?

A. Not very bright, because I saw it flicker up and die out. I could not see much about the light.

Q. Flickered up and died out?

A. She came up like this and go out again.

Q. Go completely out?

A. No—well, yes, completely out.

Q. Go right out? A. Yes.

Q. Did the masthead light do the same thing?

A. Just exactly the same.

Q. It would flare up and go completely out?

A. Yes.

Q. The masthead light did that too, did it?

A. Yes.

Q. And that masthead light was so elevated it could not have been taken for any lights on deck, could it?

A. It might have, it might have been—I could not see her hull.

Q. How high was it above the water, do you imagine?

A. Well, I don't know. I was looking down on it.

Q. You were looking down on it? A. Yes.

Q. Well, how close were you when you were looking down on it? A. Say a quarter of a mile.

Q. And do you mean to say that a quarter of a mile off from your vessel you could not estimate about the height of that masthead light from the water?

A. No, I could not estimate it.

Q. You could not estimate it. Now, coming around Pully Point towards Robinsons Point, did you ever notice the glow of the lights of the city of Tacoma back of Robinson Point? A. Back of Robinsons Point?

Q. Yes?

A. I have seen the electric lights in the air, yes, that is, the glow.

Q. Yes. That glow was in the sky on this night, wasn't it? A. Well, I didn't notice it, no.

Q. You didn't notice it. After you had passed the



“Strathalbyn” and came on to Tacoma, how far off was it that you lost sight of her masthead light or this light you took to be her masthead light?

A. How far off from the—

Q. (Interrupting “Strathalbyn”?)

A. (Continuing) —“Strathalbyn”?

Q. Yes.

A. Oh, I think we passed the “Strathalbyn” off Robinson Point about a quarter of a mile. She was heading in to Robinson Point. After we got by Robinson Point I looked back, I saw two or three different lights.

Q. You think you were a quarter of a mile off then?

A. When we passed her, yes.

Q. What is the greatest distance you saw the “Strathalbyn’s” lights that night—your estimation?

A. About a quarter of a mile.

Q. Did you see her red light at that distance?

A. No sir.

Q. You could not see her red light at that distance.

A. No.

Q. Have you any defect of your eyes, captain, that you know of?

A. No, I have got pretty good eyes.

Q. Good eyes?

A. Good eyesight.

Q. This was a beautiful night to see lights, was it not—atmosphere clear?

A. Yes, good night to see lights.

Q. Fine night to see lights. You could see the lights on shore, could you?

A. Yes, I saw some lights on shore at Pully Point.

Q. Could you see the lights on shore on Maury Island? A. Where is that?

Q. That would be where Robinson Point light is. Did you see any lights on the shore there?

A. Well, I didn’t notice any.

Q. Did you notice any lights on shore?

A. I noticed on shore at Browns Point or Dash Point there, as we passed by. In Tacoma—I saw it away in Tacoma after we got around Robinsons.

Q. Didn't have any trouble seeing the "Flyer's" lights in her cabin, did you, at all? A. Not at all, no.

Q. Any trouble seeing the "Indianapolis'" lights in her cabin?

A. I didn't notice the "Indianapolis".

Q. You didn't notice her at all?

A. No, I didn't. I saw some other vessels coming down, though, that I noticed.

Q. What other vessels did you see coming down loaded?

A. Well, we saw two or three vessels after the collision come down. I found out afterward one of them was the—

Q. Was the what?

A. Duffy said it was supposed to be the "Queen". Took our—I think it was the "Queen" he said—I don't know for sure it was the "Queen"; he said it would be the "Queen", because she was supposed to have our berth up there, and that is the time she was to be leaving. I think he said it was the "Queen".

Q. Did you hear your lookout report lights ahead?

A. No sir.

Q. You were not on deck when that was done?

A. No sir.

Q. Some ten minutes before the accident, you did not hear it some ten minutes before the accident?

A. No.

Q. Were you on deck some ten minutes before the accident, on the bridge some ten minutes before the accident?

A. No, I don't think so. I was on the deck about six minutes before the accident, I guess—six or eight minutes.

Q. Was Mr. Duffy on the bridge at the time, or was he down with you? A. He was on the bridge.

Q. He was not down with you?

A. No; he was not down with me.

Q. Did you see Mr. Duffy on the bridge when you came up there—

A. (Interrupting) Yes sir—

Q. (Continuing) —from below.

A. (Continuing) —I saw him on the bridge.

Q. Was Mr. Duffy in charge of the vessel and on the bridge all the time from Seattle until this accident?

A. Yes sir.

Q. Are you sure of that of your own knowledge?

A. Well, he was up there every time I went up there. I was up there three or four times.

Q. Had eight bells rung before this accident happened? A. I didn't hear it.

Q. What was your course after you had straightened away from Pully Point to Robinsons Point—do you know yourself?

A. Well, in the log book, I know the log book—what the log book gives.

Q. You don't know from your personal knowledge?

A. No.

Q. What is the variation on your compass on the inland waters, if you have any and know?

A. Variation or deviation?

Q. Deviation, I mean?

A. Well, it was 9 degrees westerly on the compass we were steering.

Q. On what course? A. Southeast courses.

Q. 9 degrees westerly? A. Yes.

Q. On your southeast courses. And you took your departure for Robinsons Point at about a half a mile off Pully Point?

A. The pilot did that, yes.

Q. You said it was shortly after you blew the three whistles on your vessel that you came together. How many seconds would you say that was?

A. Well, I would say it was a minute.

Q. When you hit the "Strathalbyn" how much by her did you go?

A. Didn't go by her at all.

Q. Didn't go by her at all?

A. No, not as—

Q. (Interrupting) Didn't your bow cross the bow of the "Strathalbyn"? A. Well—

Q. How? A. Cross her bow?

Q. Yes. A. No.

Q. Didn't your bow cross the bow of the "Strathalbyn"? A. No, I don't think so. We went—

Q. (Interrupting) That is, as near as you can tell about it, your bow did not cross the bow of the "Strathalbyn"?

A. No, she didn't cross the bow. She may have hit her and went into her bow, but she did not cross her bow. Our ship did not go across her bow, no.

Q. It did not go across her bow at all? A. No.

Q. Did not slide out of that wreckage on beyond the bow? A. No sir.

Q. You came right to a good standstill right there in that wreckage, did you?

A. No, we backed out of it. We were not together that much (snapping finger) before we were away from her.

Q. You went right up then and stopped while you were in the wreckage?

A. Stopped in it?

Q. Yes, and then drew right away again?

A. No, she didn't stop in it. She was stopped already before that.

Q. What was stopped?

A. The "Virginian". The "Virginian" was stopped before that.

Q. And the "Strathalbyn" ran into you—is that the idea? A. I would not be surprised.

Q. And struck you on the starboard bow?

A. Well, no, I don't say she did. She struck us near the stem.

Q. She struck you, did she—is that your idea of it?

A. She struck us.

Q. With her bow—did she strike you with her bow?

A. I don't know whether she struck us with her bow or not.

Q. You don't know? A. No, I don't know.

Q. That is what I thought. You could not see, in fact, could you?

A. I could not see her, no, to tell which way she struck us.

Q. And you could not see whether you struck her or not, then, could you? A. What?

Q. You could not see whether you struck her then, or not, could you? A. See whether we struck her?

Q. Yes.

A. No, because I could not see the hull of the ship, certainly not.

Q. Then when you testify that you struck her you mean to say you don't know anything about it?

A. I testify I struck her?

Q. That your ship struck the—that the "Strath-albyn" struck your ship on the—

A. (Interrupting) I don't say she struck us. I say we came together.

Q. I see. All right. Was any of your cargo damaged by this collision? A. No sir.

Q. How do you arrive at the distance of your bridge above the water in the condition you were in?

A. Measurement.

Q. Did you take the measurement yourself?

A. I told the mate to take it.

Q. Which mate? A. First officer, first mate.

Q. And then you say 40 feet from what he told you; is that it?

A. He gave it to me on a piece of paper. I asked him to measure it.

Q. Was it exactly 40 feet?

A. The light was 40 feet, I think.

Q. The light?

A. The lights—our lights above the water, 40 feet.

Q. I thought you said your bridge deck?

A. Well, the deck is on the lights.

Q. The lights are on the bridge deck?

A. On the bridge deck.

Q. You think he said 40 feet?

A. Well, I had it on a piece of paper and I don't know whether I have got the paper now. I left it aboard ship.

Q. That is as near as you can come to it, is it?

A. That is as near as I can come to it.

Q. So when you say 46 or 47 feet—a man standing up would be 46 or 47 feet above the water—

A. (Interrupting) That would be about where he would be, yes.

Q. A seven foot man would be—



A. (Interrupting) Yes, exactly. A six foot man would be 46 feet.

Q. So that 40 feet is kind of an estimate with you, is it?

A. No, the estimate is—40 feet is the measurement. The rail is 45 feet, I think that is it exactly; that is the measurement that was given to me after I asked the mate to get that. The light was 40 feet and the rail is 45 feet.

Q. Now, as I understand you, captain, the third officer reported to you that there was something ahead and you looked ahead for it and you could not see it, you could not make out the outline of it at all? A. No sir.

Q. You could not tell that there was a thing on the water out there? A. No sir.

Q. Is that it—not a possibility of doubt about that, is there? A. Not a possibility of doubt.

Q. There was not the slightest indication on the water at any time before she struck you, that there was a vessel ahead of you, except these four whistles that you heard? A. That is all.

Q. That is all? A. Yes sir.

Q. And you never saw her—sight of her or a glow from her, from a lamp or anything else, until after you had been struck? A. Yes sir.

Q. You never saw her hull or the loom of her hull until after you had struck? A. No sir. I didn't see—

Q. (Interrupting) You are absolutely positive of that, are you? A. Yes sir.

Q. And you were looking in that direction, were you? A. I was looking ahead and around.

Q. And you had not at any time prior to this accident and after or about the time you were turning Pully Point seen the lights of any vessels ahead of you, that is, between the time of the accident—or between the time after you turned Pully Point and the time of the accident?

A. Yes, I saw the "Flyer's" lights.

Q. Ahead of you—except the "Flyer"?

A. That is all.

Q. Absolutely. You were looking for it while you were on the bridge?

A. Well, I took a casual glance around. I was not

looking for lights particularly. I just looked to see how the vessel was going.

Q. In other words, the vessel was in charge of Mr. Duffy and you were not paying particular attention to its navigation?

A. Well, I was just taking a casual glance around. I saw everything was clear, I saw the "Flyer's" lights.

Q. (MR. HUGHES) Does that refer to the second time you came on the bridge, or the first time?

A. Well, this is the first time I was on the bridge.

Q. (MR. HAYDEN) Well, now, I am referring to the second. You mean you saw the "Flyer's" lights the first time you came on the bridge, or the second time?

A. The first time I came on the bridge, when the "Flyer" passed us.

Q. You saw the "Flyer's" lights the second time you were on the bridge, too, didn't you?

A. Sure, when I came on the second time, yes, but you are not talking about—

Q. (Interrupting) Before the collision? A. Yes.

Q. I am talking now of the time between the time you passed Pully Point and the time of the collision?

A. Yes, when I came on deck I saw the "Flyer's", you mean?

Q. Yes.

A. Yes. I didn't see any lights except the "Flyer's" lights.

Q. Before you came to Pully Point, before the telegraphing— A. Yes.

Q. (Continuing) —and before you went below—

A. (Interrupting) Yes.

Q. (Continuing) —when the "Flyer" had passed you, was abreast of you, looking ahead did you see any other lights of any ship except the "Flyer"?

A. No sir.

Q. Now, you said to Mr. Hughes that you made out the loom of this vessel as you were backing away from it? A. Yes.

Q. No question about that, is there?

A. No. I don't think there is any question about that. I made out the loom of her—

Q. (Interrupting) How far did you make out the loom of her, how far did you back away from her?

A. Well, I backed away from her, when we came to a standstill, backing away from her I think about 200 feet off; that is about the time I saw the red light too, between two or three hundred or four hundred feet.

Q. And you could see the loom of her that far at that time?

A. I could see the loom of her by the lights—what I took to be the loom of the ship, yes.

Q. You say your bridge is 200 feet from the bow?

A. About 200 feet, yes; between 175 and 200, I should judge.

Q. Do you think that you could have taken that light that would have come through the port holes in the bow of the vessel for a masthead light?

A. Yes, it could be taken—

Q. (Interrupting) Do you think you would have done it, as a navigator?

A. Well, it is hard to say about that.

Q. Well, I know it is hard to say, but I don't think you would, would you, captain?

A. I don't know whether I saw any lights from the port hole or not; I don't know whether there was any port hole there or not.

Q. I thought you answered counsel to that effect?

A. No, I said it might—there might be a light there. I don't know whether there was any light there or not.

Q. Do you think if there might be a light there in that position, that you would take that for a masthead light?

A. Well, I judge it by my own ship; I might, because we were about 40 feet above the water. When you get a mast foretop here 30 or 40 feet above the water it is pretty high.

Q. So that your lights shine out so that they will be taken for a masthead light?

A. No, we have our high up lights, 50 feet above the deck. You can see our lights plain.

Q. I am talking about port hole lights.

A. No, because you have got a row of them there, they could not be taken for—6—10.

Q. If there was a row of lights in the bow of the "Strathalbyn," they could not be taken for a masthead light?

A. No, not a row of them, no; if they showed a row of lights they could not possibly be taken for the masthead light.

Q. You say that this light that you took for the masthead light was about 200 feet aft of the—the range light was about 200 feet aft of this masthead light that you saw, or took to be a masthead light? A. Yes.

Q. Were the lights pretty good for judging distances, could you judge distances pretty well that night?

A. Well, I would not say you could, no.

Q. You would not say? A. No.

Q. Now, you said here that you walked across the bridge before the signal "Full speed astern"? A. Yes.

Q. Then walked to the starboard side?

A. I walked up on the—

Q. (Interrupting) Then the pilot had said "Full speed astern" and you were on the bridge thirty seconds. What do you mean by that?

A. I say from the time I heard the stop walked up out of my room, went up on the port side, walked across to the starboard side, I should judge it was thirty seconds had elapsed from the time I heard that telegraph ring "stop" until I heard him say "Full speed astern".

Q. Thirty seconds. Did you hear your vessel blow any signals, whistles, at all? A. No sir.

Q. (MR. HUGHES) You heard the three?

A. Oh, yes, the three whistles I heard. I heard them blow, told them to blow them myself.

Q. (MR. HAYDEN) You started out on deck immediately, did you, after you heard the telegraph—

A. (Interrupting) Yes sir.

Q. (Continuing) —telling the engines to stop. And it was about thirty seconds until the engines were rung down, "Full speed astern"?

A. Yes, thirty seconds to a minute from the time I left my room until the time of the "Full speed astern", I should judge, about.

Q. When you struck this vessel, were you trying to make out what she was?

A. I was trying to make out what it was—or what it was or what lights there was or something ahead, as soon as I got out on the bridge.

Q. Yes.

A. Yes, I was looking out ahead to see what was the meaning of this—

Q. (Interrupting) And after you hit her you were trying to make her out, were you. A. Exactly.

Q. That is what your mind was really centered on—trying to find out what was the trouble ahead of you, wasn't it? A. When I came on deck, yes.

Q. Yes, and after you hit her?

A. No, I knew what the trouble was after we hit her.

Q. Didn't you have something to do looking out for your own vessel, didn't you send a man forward to use some lights on your forecastle head there?

A. No, the engineer went forward and the mate went forward. They came out after the collision. They went forward.

Q. You were watching that, were you?

A. No, I was not, I was watching the ship ahead.

Q. Didn't pay any attention to what was going on in your ship then?

A. No, not exactly. Well, except running the bridge. I know I saw the mate go forward. He came right up about a minute afterwards and—

Q. (Interrupting) They went forward and took the glasses or electric light and put them down over the bow?

A. Took a light, yes, and went forward.

Q. To see how badly you were hit. And how long were you watching the "Strathalbyn" immediately after the collision, do you suppose?

A. Well, I should think we watched her for an hour afterwards.

Q. I mean how long was your attention centered on her in shifting around?

A. For an hour afterwards.

Q. Didn't see anything else for an hour afterwards?

A. Oh, yes, I saw some vessels pass us.

Q. Yes. What I am getting at is, how long was your mind entirely occupied by watching the "Strathalbyn"? What was going on in your ship after the col-



lision—giving signals to reverse and all the rest of it, stopping her after you had reversed?

A. Well, my mind was occupied practically an hour. I didn't want to get too close to that ship, nor I didn't want to get too far away from her.

Q. Did you send a boat or anything over to that ship to see what was the matter with her—lower a boat on your ship? A. No.

Q. Didn't do anything like that. While you were backing the vessel, what were you observing?

A. I was observing the "Strathalbyn".

Q. Your mind was entirely occupied by the "Strathalbyn" while you were backing the vessel?

MR. HUGHES: Oh, I object to that question as incompetent and immaterial.

A. No, not exactly; it was not occupied—it was occupied with my own ship too, and the "Strathalbyn" and things in general.

Q. (MR. HAYDEN) You said you saw the cargo of the "Strathalbyn" after the accident, the next morning, in Tacoma? A. Yes.

Q. And it looked to you to be on a level with the bridge. Did you take any measurements to determine whether it was on a level with the bridge or not?

A. No sir.

Q. You were considerably down below the cargo, I imagine, when you saw it, and it looked to you to be on a level with the bridge. A. Yes.

Q. Isn't it a fact that it looked to be considerably below the level of the bridge?

A. No, it looked to me just about level with the bridge. I was looking in connection with her light-boxes, not specially her bridge but in connection with her light-boxes, and it looked to me—

Q. (Interrupting) And you had the light-boxes specially in mind? A. Exactly, specially in mind.

Q. How much are those light-boxes above the bridge? A. What?

Q. How much are those light-boxes above the deck of the bridge?

A. Well, I don't know exactly how much.

Q. You didn't take special notice of that, did you?

A. No.

Q. So you did not take special notice of the lumber either, did you?

A. Yes, I noticed his deck load.

Q. You say that deck load was up to the level of the deck of the bridge?

A. I say it looked to me to be about on a level with the bridge. I would not say it was on a level with the bridge.

Q. Is there any reason why you can't see the difference of a couple of feet, that you know of, any ocular trouble, that you can't tell a couple of feet off?

A. No, I don't think so.

Q. That is as you recollect it now, that it was on a level? A. Yes sir.

Q. Or looked to be on a level. You don't want the Court to understand that you intend to be exact about that, do you? A. No, I don't.

Q. Now, you say that the deck load appeared to be on a level with the light-screens. You don't want the Court to understand that you mean to be exact about that, either, do you?

A. Well, to my knowledge or my idea the deck load was on a level with the light-boxes. Yes, I want that—that is my—what it looked to me.

Q. You want to testify positively that you saw the deck load on a level with the light-screens?

A. No, I won't say that, I won't say that. I will say to my—

Q. (Interrupting) You want the Court to understand that is the case, without testifying positively to it, is that it? A. No, I don't.

MR. BOGLE: He has testified that that was his view of it.

A. That is my idea about it. I don't—

Q. (MR. HAYDEN, interrupting) Just appeared.

MR. HAYDEN: I wish to make a demand for the production of the log, the mate's log and the engineers' log on this vessel.

MR. HUGHES: You will also produce your logs, I suppose.

MR. HAYDEN: Oh, we haven't any objection to

that at all. You can look at them now, if you want to; there is no objection to that at all.

An adjournment was here taken until 1:30 o'clock this afternoon.

#### AFTERNOON'S PROCEEDINGS.

January 31, 1912.

CAPTAIN JOHN S. GREEN resumed the stand.

Q. (MR. HAYDEN) Were you on an even keel when you left here?

A. That is without any list, you mean?

A. No, I mean forward and aft? A. No.

Q. How much were you drawing forward?

A. We were drawing about 17 feet forward.

Q. What were you drawing aft?

A. I would not be sure about that.

Q. How much were you down, approximately, by the stern?

A. Well, I think we were three feet by the stern.

Q. (MR. BOGLE) How much?

A. Three feet, I think. We have got that on record—what the draft was.

Q. (MR. HAYDEN) At the time of the accident the tseamer 'Flyer' was about three eighths of a mile ahead of you to the starboard?

A. Well, I think it was about a half mile, about three points on the bow.

Q. Might have been three eighths?

A. Yes, might have been three eighths.

Q. Was the "Flyer's" course parallel with yours after she passed you?

A. No, she was off—hauling off; she was more of an angle, was not parallel, a little on an angle.

Q. Do you remember answering this question asked you by the inspectors: The question is "Was the 'Flyer's' course parallel or about parallel with yours after she passed you?" And you answered "Yes, I should think it was parallel"?

A. No, I don't remember saying that.

Q. If you said that at the time before the inspectors, do you wish now to correct it or to say that you were correct at that time?

A. No, I say that—what I say now, that I think she was a little—

Q. (Interrupting) When are you going to get off the dry dock—you are at Bremerton now, aren't you?

A. We will get off tomorrow, I think.

Q. When did you go on? A. Went on Saturday.

Q. Last Saturday?

MR. HUGHES: Why do you ask that, for any special reason?

MR. HAYDEN: I just wanted to kind of find out, that is all.

MR. HUGHES: Well, but it is not cross examination. I don't want to be objecting.

MR. HAYDEN: I think that is all, Mr. Hughes. (Witness excused.)

JOE MIGUEL, produced as a witness on behalf of RESPONDENT and CROSS-LIBELANT, having been first duly sworn by the Notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (MR. HUGHES) Are you a seaman?

A. Yes sir.

Q. How long have you been a seaman?

A. About six years.

Q. Are you on the "Virginian"?

A. Yes sir.

Q. How long have you been in the employ of the "Virginian"?

A. Been employed on the "Virginian" about eight months.

Q. In what capacity?

A. As quartermaster.

Q. How long have you been quartermaster of ships of that kind?

A. About a year and eight months.

Q. What was your duty the night of January 12th, the night of the collision?

A. I was on the lookout.

Q. What was your position as lookout—where, I mean?

A. I was on the starboard bow almost forward.

Q. You have no forecastle cabin. Flush deck?

A. Yes.

Q. About what time did you leave Seattle?

A. I didn't know. I had no idea what time. It was around somewhere about seven o'clock, in that neighborhood.

Q. You didn't take any note of the exact time?

A. No sir.

Q. Now, do you remember the "Flyer" passing you on your way to Tacoma?

A. Yes sir.

Q. About where was that with reference to what you now know to be Pully Point?

A. Oh, I should say Pully Point was almost abeam of us then.

Q. You remember the white light at Pully Point, do you? A. Yes sir.

Q. How did the "Flyer" pass you?

A. She was coming up on our port and then she crossed our stern and came up astarboard side of us.

Q. Passed by on your starboard side, did she?

A. Yes.

Q. Going in the same direction, but faster than you were? Yes sir.

Q. About how far was she off from you when she was abeam of you?

A. I should say about our ship's length away.

Q. That would be when she was opposite—when her beam was about opposite you, when you stood on the bow of the ship; you think she would be in the neighborhood of 500 feet away then? A. Yes.

Q. Your ship I believe is 492 feet long. Is that right. A. Yes sir.

Q. Did you notice whether she appeared to be running parallel or getting further off from you?

A. She was spreading away from us.

Q. After she had passed you, did you hear any single blast of whistle from a point ahead?

A. Yes sir.

Q. Did the "Flyer" answer it?

A. Yes sir, the "Flyer" answered it.

Q. About where was the "Flyer" when she



answered that whistle, where with reference to your position on the bow of your ship?

A. She was quite a bit past us.

Q. And on your starboard bow? A. —bow.

Q. Did you afterwards hear another whistle from ahead?

A. Yes sir, I heard another whistle, sir.

Q. From the same apparent source as the first, that is, it was not from the "Flyer"? A. No sir.

Q. How long was that after the whistle that the "Flyer" answered?

A. I think it was about a minute.

Q. Up to that time had you seen any light of any ship from which this whistle could proceed?

A. I could see—I saw a red light and I reported it.

Q. What red light did you see?

A. I saw Robinson light.

Q. When did you see or report that?

A. I saw that after the "Flyer" had whistled to us and we answered her.

Q. That is then about just before you were abreast of Pully Point?

A. We were there somewheres.

Q. Some place opposite Pully Point? A. Yes.

Q. Now, this red light that you saw you reported as a red light did you?

A. I didn't say the color—I just reported it.

Q. What?

A. I didn't give the color of the light.

Q. What did you report?

A. I reported the light on the starboard bow.

Q. This light was how much on your starboard bow when you reported it?

A. It was about a point.

Q. And did you notice that light all through the evening from that time on? A. Yes sir.

Q. So that you see what light it was?

A. Yes sir, I noticed that light right along.

Q. What light was it?

A. It was Robinson light.

Q. You saw the same light after the collision?

A. Yes sir.

Q. Clear on until you got to Robinson Point, didn't you? A. Yes sir.

Q. But I am asking you whether you saw any ship's light at the time or after hearing either of these two whistles?

A. No sir, I didn't see any other ship's light.

Q. When the second whistle was given, did your ship answer it? A. No sir.

Q. Did you hear another single blast from ahead?

A. No, I didn't hear any. I went forward, you see, more towards the bow, and the wind was blowing a little harder there and I didn't hear any other whistle.

Q. You don't remember hearing another whistle?

A. No sir.

Q. You mean single blast?

A. I mean—when I say not hearing a whistle I mean single blast.

Q. Did you afterwards hear four blasts from ahead of you?

A. Yes sir, I heard four blasts afterwards.

Q. About how long after the last single blast you had heard, if you know?

A. Two minutes, about.

Q. Had you been looking out all the time?

A. Yes sir.

Q. From the time that you heard the first whistle that was given to the "Flyer" until you heard these four blasts, did you see any masthead or range or side lights of a ship from which that whistle could come?

A. No sir, I didn't see any lights at all, sir.

Q. And were you looking ahead all the time?

A. I was looking towards that direction where the sound came from.

Q. Could you see the outline of any ship from which it might come, up to the time you heard the four whistles?

A. No sir, I didn't see anything.

Q. (MR. HAYDEN) What is that?

A. I didn't see any outline.

Q. (MR. HUGHES) Did your ship answer those four whistles? A. Yes sir.

Q. By three? A. With three.

Q. Now, about how long after that was it before the ships came together?

A. Well, about a minute or so—

Q. (Interrupting) It is hard to give any exact time. I just want your idea. You think in the neighborhood of a minute, as it seemed to you—is that right?

A. Yes sir.

Q. Did you see anything of this vessel before the collision, and, if so, when and what did you see?

A. Just before the collision I heard some one out in the darkness there sing out "Look out on the fore-castle head" and then I looked out there and I could just make out the hull of a vessel coming down.

Q. How long was that before the ships came together?

A. Just a few seconds. Just gave me enough time to get away.

Q. When you heard this voice, what did you do?

A. I looked out and I saw that dark object coming to us and I ran aft.

Q. About how far did you go aft?

A. Just about 20 feet.

Q. And that would put you about how far back from the stem of your ship, from the outer bow of your ship?

A. The stem would be just about 30 feet.

Q. Could you get any idea how those two ships came together in the darkness there?

A. They seemed to come almost at right angles; that is the way it seemed to me. I could not see exactly.

Q. What do you mean by right angles, as though the other ship was going across your course, do you mean?

MR. HAYDEN: I object to that as leading.

A. About that. At first I thought she wanted to cross our bow.

Q. But could you see the outline of the ship sufficiently to tell any more than—

A. (Interrupting) No sir, I could not see.

Q. Now, what did your ship do then, what occurred after the two ships came together?

A. Well, as soon as they came together, why, they

separated again, and I noticed the other ship—she turned around towards Tacoma again, and then I saw a red light.

Q. What did your ship do when they separated—as they separated?

A. Our ship seemed to be going back away from her.

Q. You say you saw a red light? A. Yes sir.

Q. What kind of a light did that appear to be, bright or dim?

MR. HAYDEN: I object to that as leading and suggestive?

A. It was not very bright.

Q. (MR. HUGHES) What?

A. It was not very bright.

Q. As you backed away from her, did you see any other lights on the deck or above the deck of the ship that you collided with?

A. Yes, I seen a few lights down around the deck, and I seen a white light a little further up. I didn't think it was a masthead light, because it did not seem high enough for that.

#### CROSS EXAMINATION.

Q. (MR. HAYDEN) You say you have been with the "Virginian" about six months?

A. About eight months, I said.

Q. Or eight months. Were you on watch when they left Seattle? A. Yes sir.

Q. Had eight bells rung before this accident happened. A. No sir, eight bells had not rung, sir.

Q. How long after the accident before the eight bells rang? A. I didn't hear them.

Q. Was there anybody else on the lookout but you?

A. No, I was all alone forward on the deck.

Q. Were you all alone forward on the deck?

A. Yes sir.

Q. All the time? A. All the time.

Q. From the time that you left Seattle until the collision? A. Yes sir.

Q. Nobody else there at all?

A. Only passed by going down below in the fore-castle, but they never came forward where I was.

Q. Nobody else on the lookout at all besides you?

A. No sir, no one else.

Q. No one else at all. Was the man who put the light over the bow of you after the collision around on the forecastle head, that you noticed, at all, before this collision? A. No sir, he was not around.

Q. That you noticed. A light that you reported on the port bow was a red light, was it?

A. I reported a light on the starboard bow; that was a red light.

Q. Did you report any light on the port bow at all?

A. Yes, I reported a white light.

Q. A white light on the port bow?

A. But that is long before that.

Q. At Pully Point light? A. Yes sir.

Q. Did you report any other light except Robinson Point light and Pully Point light that night after you got out towards Pully Point?

A. I reported a few lights, but I don't know what lights they were—shore lights.

Q. Did you see any vessels pass you after the "Flyer" passed and before the collision?

A. No sir, I didn't notice any.

Q. Did you notice any vessel coming around Robinson Point light after you were about or close to Pully Point light, coming from the direction of Tacoma towards you? A. Before the collision?

Q. Before the collision.

A. No sir, I didn't notice that.

Q. How long before you got abreast of Pully Point was it that you saw this red light that you say was Robinson Point light?

A. Well, I don't know how long it was, but I know the "Flyer" blew to us and we answered her and I reported that light right after that.

Q. Right after the "Flyer" blew to you?

A. Yes sir.

Q. Immediately after?

A. It was just within a minute or so.

Q. Did you see any other vessel pass you that night but the "Flyer"? A. I didn't notice any.

Q. You didn't notice any.



A. When we were near Tacoma I saw the "Flyer" coming back towards us.

Q. Yes. That is the only vessel, though, that you saw pass you coming this way, coming from Tacoma to Seattle? A. That is all I recollect now.

Q. You don't recollect having seen the "Indianapolis" meet you? A. No sir.

Q. You were on the lookout there all the time?

A. Yes sir.

Q. How far in distance would you say you had run beyond Pully Point before you collided?

A. I have no idea.

Q. How close were you to Robinsons Point light?

A. Oh, we were quite a ways off from Robinson Point light.

Q. A mile, two miles?

A. I would not attempt to say; I have no idea.

Q. Were you nearer Robinson Point than you were Pully Point at the time of the collision?

A. No sir, we were nearer Pully Point.

Q. About what would you say would be the proportion of distance, a third of a half? A. Nearer a third.

Q. About a third. How much would you say the "Flyer" was ahead of you, in distance, when you heard the first whistle given to pass the "Flyer"?

MR. HUGHES: You mean that first whistle from ahead?

MR. HAYDEN: Yes.

MR. HUGHES: The first whistle from the "Strathalbyn"?

MR. HAYDEN: The first whistle from ahead, when the "Strathalbyn" was giving it to pass the "Flyer"?

A. She was quite a ways ahead of us. I could not notice just about how far she was—I could not tell just how far.

Q. (MR. HAYDEN) Quite a good distance, though. A. She was way ahead.

Q. Was ahead? A. Way ahead of us.

Q. As much as a mile?

A. Oh, I don't think it was that much.

Q. You heard one whistle then and the "Flyer" answered one whistle? A. Yes sir.

Q. Did you know what that meant? A. Yes sir.

Q. What did it mean?

A. It meant that she wanted to pass on the star-board side—I mean on the port side.

Q. That is, that he wanted to pass port to port?

A. Yes sir.

Q. Did you report that whistle to the bridge?

A. No sir, I didn't report it, sir.

Q. Is that a part of your duties to report whistles when you hear them?

A. In a fog it is, but it was a clear night, at least it was not foggy.

Q. How far were you off from the "Strathalbyn" when you saw what you took to be her masthead light after the collision?

A. Oh, could not have been very far; she was alongside of us then.

Q. How far was it?

A. It must have been a few hundred feet or so, two or three hundred; I have no idea.

Q. You haven't any idea?

A. No sir, I have no idea.

Q. How far off were you when you saw the red light on the "Strathalbyn"?

A. I saw the red light before I saw the white light.

Q. How far were you away when you saw the red light?

A. We had separated a little and she had turned around towards Tacoma again.

Q. How far away were you?

A. I don't know how far it was. We were pretty close to her.

Q. Well, you can give me some idea of the distance, can't you? A. About 200 feet.

Q. About half your boat's length, do you think?

A. Oh, a little less than half.

Q. A little less than half. When you collided, did the bow of your vessel pass across the stem of the "Strathalbyn"? A. I don't think it did.

Q. You don't think it did? A. No sir.

Q. Didn't you strike the "Strathalbyn" on the port side? A. I don't know what ship struck.

Q. No, you don't know. A. No sir.

Q. But didn't your bow go across onto the star-board side of the "Strathalbyn"?

A. No sir, I didn't notice it.

Q. You don't know. Why can't you tell?

A. Because as soon as they touched they separated again. They were not together very long.

Q. Just as soon as they touched they separated, did they? A. Just about as soon—

Q. (Interrupting) Have you seen the "Strathalbyn" since the collision. A. I saw her from the collision.

Q. Did you see any damage to her bow?

A. I saw some damage on the starboard bow.

Q. And do you know which side you struck her on, or you came together on, if you choose to put it that way?

A. Well, if we struck her we must have struck her on the port side.

Q. Well, then did your bow go across the bow of the "Strathalbyn"? A. No sir, we didn't go across the bow.

Q. You didn't go across the bow? A. No.

Q. You struck at about right angles, you say?

A. Pretty near right angles.

Q. Did the "Strathalbyn's" bow go across yours?

A. I don't think it did either.

Q. You don't think either bow got across the other one—is that right? A. Yes sir.

Q. That is the way it looked to you, was it?

A. It looked to me that way.

Q. How much above the "Strathalbyn" were you on the forecandle there?

A. I don't know. When we were together I could look way down on her; I don't know just how many feet below she was.

Q. You were way above her?

A. Yes, way above her.

Q. What is the height of your bow from where you were standing to the water, about?

A. About 30 feet. Just a guess.

MR. HAYDEN: Is that about right, captain?

CAPTAIN GREEN: Yes, I think that is about right, about 30 feet.

Q. (MR. HAYDEN) What did you first see on the "Strathalbyn", how did she appear to you when you first saw her?

A. Well, it looked like—I don't know what it did look like—just some dark object coming towards us; had no shape to it at all.

Q. Had no shape. How much of it could you see in length, did it look like a long object coming towards you, or a short object?

A. It looked like a round object, to me.

Q. It looked like a round object? A. Yes.

Q. You say you struck about at right angles to each other, apparently? A. Yes sir.

Q. That is you mean you struck, you came in contact—when you came in contact you were at right angles with each other—is that what you mean?

A. Yes, about at right angles.

Q. You were how many feet away from the bow of the "Virginian", standing at the time?

A. When we came together?

Q. Yes. A. I was about 30 feet away.

Q. About 30 feet away?

A. Yes, from the stem.

Q. Were you looking at the "Strathalbyn" after you got the loom of her all the time?

A. No sir, I went back and turned around and then I seen her again just as they came together.

Q. Saw her just as they came together. Then when you got the loom of her you ran away, you didn't look at her until you got in safety?

A. Oh, I heard the sailor on the forecastle head so I got away.

Q. You say you saw the loom of her a minute or two before they came together?

MR. HUGHES: He didn't say that.

A. A few seconds.

Q. (MR. HAYDEN) How many seconds?

A. Oh, it could not have been more than ten seconds.

Q. Ten seconds?

A. It could not have been more than that, perhaps less.

Q. Didn't you see the loom of her a little while before that? A. No sir.

Q. Didn't you? A. No sir.

Q. Did you see any lights at all, any indication of light? A. No sir.

Q. Didn't see any glow at all in the chart room where the light was burning?

A. No sir, I didn't see anything at all.

Q. Absolutely nothing? A. Nothing.

Q. Didn't see the masthead light? A. No sir.

Q. Wasn't burning, as far as you know.

A. As far as I know it was not.

Q. You didn't see the side light? A. No sir.

Q. At the time of the collision?

A. At the time of the collision?

Q. Or just before?

A. I had not seen anything at the time or just before.

Q. But you saw it just after? A. I saw it after.

Q. You say you saw what you took to be the masthead light; is that it? A. Yes sir.

Q. How high would you say that light was above the water?

A. Seemed to be about the level with the bridge, it seemed to me.

Q. Level with their bridge?

A. Yes, level with their bridge.

Q. That is, you were looking down on it from your height? A. Yes.

Q. How did you know it was level with their bridge could you see their bridge?

A. Well, I seen some white lights down on deck right where the bridge was—

Q. (Interrupting) Down where?

A. Down on the deck, on the cargo somewheres.

Q. On the cargo? A. Yes.

Q. Is the bridge level with the cargo? A. Yes sir.

Q. Well, could you see the bridge?

A. I could see some white paint work right there by the lights.

Q. How much above those lights?



A. Oh, I could see it right back I think and up.

Q. How far up?

A. Oh, I don't know how far up it was. About 8 feet or so.

Q. 8 feet or so? A. 6 or 8 feet.

Q. And this light that you saw afterward looked to you to be on a level with that?

A. I thought it was in the wheel house itself.

Q. In the what? A. In the wheel house.

Q. In the wheel house itself, and then afterwards you thought it was where?

A. I thought it was the masthead light.

Q. Didn't seem to be in the wheel house afterwards, seemed to be up on the mast afterwards, did it?

A. No, I didn't know where it seemed to be. I took it to be a masthead light because—

Q. (Interrupting) Did at any time you finally conclude it was a masthead light?

A. When we were on our way to Tacoma, after a long time, I took it to be a masthead light.

Q. You are sure it was a masthead light then, are you? A. I thought it was then.

Q. And you think it was a masthead—you now think it was a masthead light, do you?

A. I am not sure.

Q. You think so?

MR. HUGHES: He has answered.

A. It was not high enough to be.

Q. (MR. HAYDEN) Was not high enough to be. Do you know how high it was? A. No sir.

Q. Now, there is no question but what you saw the red light first?

A. I saw the red light, but only for a short while.

Q. Just for a short while? A. Yes sir.

Q. And there is no question but what that red light was the side light, is there. A. No question.

Q. It was a side light all right, was it? A. Yes sir.

Q. You say you only heard one whistle to you from the "Virginian"? A. To us, yes sir.

Q. And how long was that before the collision?

A. It was about two or three minutes.

Q. Two or three minutes before the collision. And

then what did you hear after that, the next thing you heard after that?

A. I heard four whistles.

Q. How long was that after the one whistle to you?

A. Seemed about two minutes.

Q. About two minutes. Then what did you hear after that? A. I heard the answer.

Q. How long did it take you to answer after you heard four whistles from her?

A. Oh, didn't take a second.

Q. Answered immediately, did you? A. Yes sir.

Q. Then how long was it before you came into collision? A. Oh, almost a minute.

Q. Almost a minute. And what were you doing between the time that you heard the three whistles from your vessel and the time of the collision?

A. I was looking ahead to see if I could see that ship.

Q. Didn't you run back?

A. Not until I heard him holler.

Q. Not until you heard him holler? A. No sir.

Q. And you heard him holler immediately that you came together in the collision, didn't you?

A. Just shortly before—two or three seconds.

Q. Just shortly before. Which way were you heading when you got through this collision, did you notice the shore?

A. Why, I noticed Robinson Point, we were heading about the same way.

Q. You were heading for Robinson Point after the collision, after you had swung away from the "Virginian"? A. We—

Q. I mean from the "Strathalbyn"?

A. We didn't swing very much away from her.

Q. You were at right angles to the "Strathalbyn" at that time?

A. As soon as we were struck we were almost.

Q. And then you backed away; is that right?

A. Yes sir.

Q. And then you were heading for Robinson Point when you straightened away after backing away; is that right?

A. Yes, we were heading in the same direction, almost the same direction.

Q. You did not change your direction at all?

A. Very little, if any.

Q. Very little. And yet you struck the "Strathalbyn" at right angles and you did not change your course at all? A. Not that I know of.

Q. It looked to you just as if you were going for Robinson Point all the time, did it?

A. Yes sir, it seemed that way to me.

Q. It seemed that way to you. And you had Robinson Point about a point on your bow all the time; is that it—Robinson Point light?

A. No sir, it was not a point all the time, it kept getting more and more all the time.

Q. Kept getting more and more all the time?

A. As we came closer to it.

Q. Kept getting more and more all the time. Well, how much of it was off of your bow just before the collision? A. About a point.

Q. Well, that is what I ask you.

A. You asked me all the time.

Q. I meant up to the collision. It was about a point on your bow immediately at the time of the collision, was it? A. Yes sir.

Q. Just about one point? A. Just about a point.

Q. And you collided at right angles with the "Strathalbyn"? A. Almost at right angles.

Q. You could make that out very distinctly from where you were standing, the angles of those vessels, could you?

A. No sir, I could only see from the bridge forward on the other ship.

Q. What do you mean by that?

A. Well, I could only see half of her length.

Q. What has that got to do with your meeting at right angles? A. Well, you asked me—

Q. (Interrupting) Isn't that long enough for you to have determined whether you were meeting at right angles? A. Yes.

Q. Then what has that got to do with your answer-

ing my question if you could see at right angles—see that you were meeting at right angles?

A. I didn't hear your question.

Q. I asked you if you didn't meet her—when you came together if you were not at about right angles?

A. Yes, we were at about right angles.

Q. From the time you left Pully Point until the collision you had the light of Robinson Point about a point off your bow; is that right? A. Yes sir.

Q. Right up to the time of the collision—is that the way you want it to be understood? A. Yes sir.

Q. Now, immediately after the collision where was that light from your bow?

A. I could not say immediately. A minute or so after I was—the mate was up there, the fellows around there, getting around their lights and so on, and I was not noticing that light all the time, I didn't have my eye on it all the time.

Q. When the "Strathalbyn" was approaching you and you were looking for her there you were not watching Robinson Point light there either, were you?

A. Well, I could see that light.

Q. Were you looking at Robinson Point light when you were looking for the "Strathalbyn"?

A. I didn't know there was a light out there.

Q. You didn't know there was a light out where?

A. I didn't know it was Robinson Point light I could see all the time.

Q. You didn't know it?

A. I thought it was a steamer.

Q. Robinson Point light was a steamer?

A. Yes sir.

Q. That is just exactly what I thought, too, and that is the light you had on your bow, a point off your bow, exactly, isn't it? A. Yes sir.

Q. That is it exactly—the cat is out of the bag—that is the light that you ran into, isn't it? A. No sir.

Q. How? Come, tell me now, isn't that the light you ran into?

A. No, that is not the light we ran into.

Q. That is the light you ran into?

MR. HUGHES: Let me suggest this is not a justice court and we have not a jury here.

Q. (MR. HAYDEN) That is the only light you saw, wasn't it—the one you subsequently found out you had run into?

A. No, I saw the other light on the other—a red light on the ship after that; I still could see that red light ahead of us.

Q. Oh yes, you could see two red lights then, after the collision, but only saw one before the collision; is that it? A. And I saw one after.

Q. You kept about a point on your bow all the time until the collision, is that it—kept that red light about a point on your bow until the collision; is that it?

A. Oh, just had it there but a short time.

Q. Just had this red light for a short time a point on your bow?

A. Well, I had not seen that light very long, you know, before the collision.

Q. You hadn't seen what light very long before the collision? A. That bright—red light.

Q. You had not seen it very long before the collision. But you saw it right after the collision, did you?

A. I saw that red light before the collision.

Q. Well, which one was it that you had not seen very long before the collision?

A. I had not seen either of them very long.

Q. Had not seen either one very long before the collision?

A. I saw one bright red light a few minutes before, I don't know just how long it was.

Q. How long was it now?

A. Oh, I had no idea of the time.

Q. But that is the one that you followed right up and kept a point off your bow, was it?

A. You mean to say that was the light on the ship?

Q. Yes, that is what I mean to say.

A. No sir, that was not the light.

Q. You saw two lights after the collision, though?

A. I saw two red lights and after the ship separated from us a little bit I lost sight of her red light.

Q. You lost what? A. I lost sight of her red light.



Q. How long were those ships together after they hit? A. You mean touching together?

Q. Right there with their bows towards each other?

A. Two or three seconds.

Q. Two or three seconds. Could not have been very much headway on either ship then, could there?

A. I don't think so.

Q. You don't think so. There was not any headway on your ship at all, was there?

A. I don't think there was any.

Q. None at all, that is your idea about it—is that your idea about it? A. That is my idea of it.

Q. Did you look over the water, see anything on the water to tell whether there was or not?

A. I looked over afterwards, I seen she was going astern.

Q. But I mean before the collision did you look over to see whether she was making headway or not?

A. I had looked over, but I could not see very well whether she was making headway or not.

Q. But the two vessels came together; you took it that the other one was the one that was moving; is that it? A. That is the way I took it.

Q. Did you see anything that you mistook for a range light—after range light, after this collision?

A. I don't think she had any range light. I could see white lights on her deck.

Q. Those were the lights carried by the men, the lanterns, were they?

A. I think they were. They were flickering all the time.

Q. Did you see this masthead light and this red light on the side go up and then go out and then go up and go out again?

A. I just saw that red light about—oh, I don't know, about a minute or so, and then I could not see it any more.

Q. Went out again, did it?

MR. HUGHES: He says he didn't see it.

Q. (MR. HAYDEN) And did you look for it any more? A. Yes, I looked for it all the time.

Q. Looked for it all the time. Were you ahead of the "Strathalbyn" or behind her at that time?

A. At that time she was—we were abreast of her.

Q. Right abreast or two points—more than two points abaft her beam?

A. No, I think we were about abreast of her.

Q. And how do you know you were abreast of her, could you see her?

A. No sir, I could not see her. I could just judge by those lights on her deck.

Q. And those lights were not stationary lights, were they? A. No sir.

Q. How far did the "Strathalbyn" get ahead of you when you were coming to Tacoma after the collision?

A. Oh, she didn't get ahead of us very much. We kept up with her for quite a while.

Q. How long were you in company with the "Strathalbyn" altogether?

A. Pretty near an hour, I should say.

Q. Pretty near an hour? A. Yes sir.

Q. What time did you get into Tacoma?

A. 11:15 about.

#### RE-DIRECT EXAMINATION.

Q. (MR. HUGHES) You spoke of being at Tacoma at 11:15. Was that after you had made fast at the dock, did you notice your watch?

A. No, I didn't notice. I noticed that clock out there, that clock.

Q. The clock there in Tacoma? A. Yes.

Q. When was that, after you had made fast to the dock?

A. I don't know if she was all made fast or not, but we were about there somewheres coming in or so. I didn't take notice.

Q. Speaking of this red light you saw you reported about the time you passed Pully Point or somewhere along there, was that the same light—red light that you speak of seeing right along after that?

MR. HAYDEN: Objected to as leading and not proper cross examination.

A. Yes, that is the same light. It is the same light, sir.

Q. (MR. HUGHES) And you reported that when you were just about off Pully Point?

MR. HAYDEN: Same objection.

A. We were about there somewheres.

Q. (MR. HUGHES) Now, after the immediate excitement of the collision, when the ships had pulled apart, did you observe this same red light ahead of you?

A. Yes sir, I observed that same red light.

Q. Was that in the same direction as the dim red light that you say you saw for a minute or so on the "Strathalbyn"?

MR. HAYDEN: Objected to as leading.

A. No sir, it was not in the same direction.

Q. (MR. HUGHES) Did I understand you correctly to say that the first that you could make out this ship by seeing any part of the vessel was after you first began to see lights on her? A. I didn't get your question.

Q. Were you able to make out anything more than sort of a loom,? that looked like a round loom to you, were you about to get anything like the dimension of a ship—of the fore part of the ship—before you saw lights on her? (No response.)

Q. To make it clear, I understand you to say that you saw sort of a loom just about the time the lookout called out to you? A. Yes.

Q. That the other fellow called out to you to look out, and looked like a round object to you. Now, after the collision you spoke of seeing the foreward part of the ship—of the "Strathalbyn"; was that after you saw white lights on her?

A. Yes, it was after I saw the white lights on her.

Q. So that it would give you some—

A. (Interrupting) Idea of the—

Q. —of the shape. Now then, that was the first that you could make out the shape or position of the ship, was it? A. Yes sir.

Q. Was that after you had backed away from her a little bit, a little ways?

A. That I could make out her shape?

Q. Yes.

A. Yes, after we had backed out, then I could make out the shape of the fore part of the steamer.

RE-CROSS EXAMINATION.

Q. (MR. HAYDEN) What direction was it that you saw this red light on the "Strathalbyn" from your ship?

A. It was almost on our beam when I first saw the red light on her

Q. It was almost on your beam?

A. From where I was standing. Almost at right angles from where I was.

Q. Almost at right angles from where you were. Which side of you? A. On the right side of me.

Q. On the right side of you? A. Yes sir.

Q. (MR. HUGHES) Is that the right or starboard side of the ship—the starboard side of your ship?

A. No, it was the starboard side of our ship.

Q. (MR. HAYDEN) The starboard side of your ship? (No response.)

JOHN D. McLEOD, produced as a witness on behalf of respondent and cross-libelant, having been first duly sworn by the notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (MR. HUGHES) Give your name and age?

A. John D. McLeod; thirty-eight.

Q. What is your business, Mr. McLeod?

A. Seaman.

Q. How long have you been a seaman?

A. Twenty-two years.

Q. How long have you been engaged on steam vessels? A. Oh, about six years.

Q. How long have you been third officer?

A. On the ship?

Q. On this or any other ship?

A. Oh, I have master of a ship, mate.

Q. Master and mate of other vessels? A. Yes sir.

Q. Steam or sail?

A. I have been master of sail and been mate of steam.

Q. How long have you been third officer—those were smaller vessels, were they?

A. Yes, smaller vessels than this.

Q. How long have you been third officer of the "Virginian"? A. Second trip.

Q. (MR. HAYDEN) What is it? A. Second trip.

CAPTAIN GREEN: It is about three months, isn't it? A. Yes, it is between three and four months.

Q. MR. HUGHES) How long have you been in the employ of this same steamship company, the Hawaiian-American or American-Hawaiian Steamship Company? A. Oh, about six months altogether.

Q. Were you third officer on duty on the evening of January 12, the night of this collision? A. Yes sir.

Q. You left the Oriental Dock in Seattle for Tacoma, did you? A. Yes sir.

Q. About what time did you leave Seattle.

A. We let go at 7:40.

CAPTAIN GREEN: No, no.

Q. (MR. HUGHES) You mean 6:40?

A. Or 6:40, I mean to say, yes, 6:40, yes.

Q. Mr. McLeod, were you on the bridge all the time up to the collision? A. Yes sir.

Q. After you left Seattle?

A. I was there all the time, yes sir.

Q. Do you remember passing Pully Point?

A. Yes sir.

Q. Do you remember the steamship "Flyer" overtaking and passing you? A. Yes sir.

Q. About where was that?

A. Right off Pully Point.

Q. Had you got abreast of Pully Point when the "Flyer" began to pass off your starboard?

A. We had passed Pully and changed our course.

Q. And you changed when?

A. Right off Pully Point.

Q. When you were about abreast or abeam, I mean, of the light?

A. When we had Pully Point light abeam we changed our course.

Q. Had you swung out any for Pully Point?

A. Yes sir, we hauled out a quarter of a point.

Q. When you got abeam of Pully Point light, what course did you then put the ship on?

A. Southeast by south, on the bridge compass.



Q. That would be what, magnetic?

A. About southeast quarter south, approximately; that is not exactly.

Q. When you took your course for Robinson—when you changed your course it was for Robinson Point, was it? A. Well, we changed our course—

Q. (Interrupting) I mean when you took your last course—is that your course?

A. To pass—that was the course to Robinson Point, yes.

Q. To pass Robinson Point. Did you see Robinson Point light at the time when you took this course?

A. Yes sir.

Q. Had you seen it before that? A. Yes sir.

Q. What kind of a light is that?

A. Well, it was a bright red light that night.

Q. Was that light visible all the time until you finally, an hour or two later, passed Robinson Point?

A. I didn't quite catch that, Mr. Hughes?

Q. I say, was that Robinson Point light all the time visible after you left Pully Point until—

A. (Interrupting) Yes sir, yes, it was a visible light.

Q. Now, how did the "Flyer" overtake and pass you, just explain?

A. Well, she came up on the port quarter, passed our stern and passed on the starboard side.

Q. Did she signal to you? A. She gave one blast.

Q. And you answered it? A. We answered.

Q. Was that before or after you were abeam of the Pully Point light?

A. Well, she passed us just off Pully Point.

Q. Did you take note of the time when you had Pully Point light abeam? A. 7:53.

Q. You took note of that yourself?

A. I noted it, yes.

Q. That was by your watch, was it?

A. By my watch, yes sir. My watch was set with the wheel house clock.

Q. About how far off your starboard side did the "Flyer" pass?

A. Well, I should judge one hundred yards.

Q. After she passed by you, did she appear to have changed her course or was she pulling away, spreading off from you?

A. Well, she was not steering the same course as us; she was steering a more southerly course than we were.

Q. That would spread her apart from you? A. Yes.

Q. More to starboard as she proceeded ahead?

A. Yes, we would separate that way.

Q. Did you hear afterwards a whistle ahead, that the "Flyer" answered? A. Yes sir.

Q. About how long after you had passed Pully Point was it that you heard those two whistles?

A. Two whistles?

Q. That is, the one from the one vessel which the "Flyer" answered?

A. About two minutes. She had passed us about two minutes.

Q. About what was the situation and position of the "Flyer", as nearly as you could observe, at the time when those whistles passed—when those whistles were given, I mean?

A. Well, she was broad on the starboard bow. She had passed us two minutes about, so she—so you could estimate that.

Q. When you heard those two whistles, could you see the vessel which gave the whistle which the "Flyer" had answered? A. No sir.

Q. Were you looking out, what were you doing?

A. We were looking out. We heard the whistles but could not see anything.

Q. Where were you?

A. I was standing on the starboard side of the bridge.

Q. Did you hear another whistle after that?

A. Yes sir.

Q. Coming from the "Flyer" or from some other objects ahead?

A. Well, it did not appear to be from the "Flyer".

Q. It did not, you say? A. No sir, did not.

Q. Well, what effort, if any, did you make to locate the vessel from which that whistle came?

A. Well, we stopped the engines the first time we heard the whistle.

Q. That is, after the "Flyer" had answered.

A. After the "Flyer" had answered, yes.

Q. Were you attempting to locate her?

A. We certainly were. We heard her whistle, but could not see the lights. Naturally we would look out to see what was—

Q. (Interrupting) Well, what was the next thing that occurred after you stopped your engine?

A. Well, we stopped and heard another whistle. The engines were set astern about that time.

Q. Full speed?

A. Full speed astern, yes sir. The pilot—

Q. (Interrupting) Did you answer that whistle?

A. Which—passing signal?

Q. Yes.

A. No, we didn't answer it because we could not see anything—any lights.

Q. What was the pilot doing?

A. The pilot was standing on the other side. He had got his glasses and looking out to see if he could make anything out with his glasses.

Q. What do you mean by the other side, the starboard side? A. The starboard side, yes.

Q. Had you gone up to the wheel house to give the signal "Full speed astern" yourself?

A. I went amidships to the telegraph.

Q. That is what I mean.

A. Yes, and I stood there at the time we stopped her.

Q. About when was it that the captain came on deck, in reference to the time you gave that signal "Full speed astern"?

A. The captain came up just as soon as I had given the signal to stop, immediately.

Q. That is, he came up then after your signal to stop. How long was he on deck before your signal was actually given to go full speed astern?

A. Well, I guess about two minutes. Between one and two minutes.

Q. Well, after the signal to go astern what occurred?

A. Well; about two minutes after that the collision occurred.

Q. Well, was there an alarm signal given ahead of you before the collision occurred?

A. Yes, they blew a danger signal. Our engines were going astern at the time. We answered with three blasts.

Q. How long was that danger signal given before the collision actually occurred, before the boats came together? A. Well, I guess inside of a minute.

Q. Did you see this vessel or any lights on her prior to the impact of the two vessels in coming together?

A. I saw a white light.

Q. When? A. Oh, it was right close aboard.

Q. Well, how close or how short a time before the collision? A. Well, too close to avoid a collision.

Q. Well, now, I am trying to get at here whether it was ten or twenty seconds or how long, in your best judgment?

A. It was in seconds—I could not just say—very close.

Q. Could you see the outline of the vessel before the collision? A. No sir, I could not see her outline.

Q. Did you hear any outcry from ahead?

A. At the time of the collision I heard an outcry, yes sir.

Q. What occurred immediately after the two vessels had collided, come together, struck each other?

A. Well, we backed away from her. Didn't seem that—

Q. (Interrupting) Did any time elapse after the actual impact of the two vessels before your vessel began to pull back from her?

A. No, it looked to me as if we went right away from her, we were not together any time at all to speak of.

Q. What lights could you see on the "Strathalbyn" as you were pulling back away from her?

A. Well, I saw a red light after the collision.

Q. Well, speaking now of the red light, did you see

more than one light on the "Strathalbyn" so that you could make out the loom of her at all as you backed away?

A. Oh, I saw a few dim white lights around the deck.

Q. And then did you see those before you saw the red light?

A. Oh, I saw about the same time, I guess.

Q. Taking those red lights, the position of her, how would you say the ship was lying with reference to your bow when you saw those lights, how was the "Strathalbyn" lying?

A. Well, she looked to be lying right alongside of us.

Q. At what angle?

A. Well, we were almost laying together at that time. We swung around—we were laying like that and I guess she was laying about that, the way it looked to me (illustrating).

Q. That would be less than a right angle—

A. (Interrupting) Yes.

Q. (Continuing)—the way you diagram it there.

A. That is after the collision, of course, when I saw the red light.

Q. Did your ship swing or back straight?

A. Well, we swung a little. At the time of the collision she took a little sheer off to port.

Q. Your bow was sheered off by the collision, do you mean? A. Yes, about a point.

Q. About a point. And how about the other ship, did she seem to be swinging?

A. I don't know anything about her, I could not see her hull at all. I seen her loom alongside of us, but—

Q. (Interrupting) As you backed did you pull away from her? A. Yes sir.

Q. Was your bow pointing—how was your bow pointing as to the lights that you could make out?

A. I saw Robinson Point light; it had about the same bearing.

Q. How did the red lights bear, that you saw on this ship?

A. Well, I lost track of it after we backed away, I didn't notice it any more. I just saw it after the col-



lision and that is all I noticed that light at all. I guess she swung around and started out.

Q. Did the "Flyer" come around?

A. Yes sir, the "Flyer" came around and came down and spoke the "Strathalbyn"—she went close to her, anyhow I suppose she spoke her, and then she came down to us, she spoke us.

Q. Say anything to you?

A. Asked us if we needed any assistance, and we said no, and captain inquired if the "Strathalbyn" was in need of assistance, and the captain of the "Flyer" reported that she was all right.

Q. Then the "Flyer" went on away?

A. The "Flyer" then went away from us. I don't know where she went.

Q. And did you lie there for a little while?

A. Yes sir, we laid there for an hour after the collision.

Q. As the "Strathalbyn" was lying there, could you see any lights on her?

A. I could see some white lights, yes.

Q. Did you follow her white lights as she went on towards Tacoma?

A. Yes, we stood off and on there, stop and head and stopping by.

MR. HAYDEN: I would like to suggest that you let the witness testify, please.

Q. (MR. HUGHES) And on which side of her?

A. What?

Q. On which side of her? A. Which side of the—

Q. (Interrupting) "Strathalbyn".

A. Oh, we kept behind her.

Q. You passed her on which side as you passed on finally, before you got to Robinson Point?

A. We didn't pass her until we started off for Tacoma.

Q. That is what I mean.

A. Then she was in that bight below Robinson Point—looked to me.

Q. You went on to Tacoma?

A. I don't know what side we passed her on. Of

course I could see white lights, but that is all I could see—how she was laying.

Q. You went on into Tacoma, did you? A. Yes sir.

Q. About what time did you get to Tacoma?

A. I can't remember the exact time now. It was after eleven o'clock.

Q. After the collision what did you do?

A. Well, I had to go down below—the telephone, or telegraph broke down.

Q. So you were down below a good share of the time?

A. I was down below in the chart room passing the word to the engineers on the telephone.

#### CROSS EXAMINATION.

Q. (MR. HAYDEN) In the chart room, you say?

A. Yes sir.

Q. The impact broke your telephone, did it?

A. Yes sir.

MR. HUGHES: Telegraph.

Q. (MR. HAYDEN) Telegraph?

A. Telegraph, Yes sir.

Q. The coming together of the ships broke the telegraph on your ship? A. Yes, broke down.

Q. Knock anybody down on your ship? A. Sir?

Q. Knock anybody down on your ship, or out of his bunk, or anything of that kind?

A. Not that I know of, no. The shock was not very—just seemed to touch, to me.

Q. On what helm did the "Virginian" or the "Strathalbyn" swing when she started to go back to Tacoma, if you know? A. I don't know.

Q. Have you seen this engineer's log?

A. No sir, I never saw it at all.

Q. You say your vessel swung about a point to port after you were struck?

A. Yes, it seemed that way.

Q. How long did you say the vessels were together?

A. Well, I would have to tell you in seconds; it is a guess; it was a very short time.

Q. Give us the best guess you have got about that.

A. Well, I think about half a minute or something

like that; it was not any more than that; it might have been less.

Q. Did the bow of your vessel pass beyond the bow of the "Strathalbyn", that you observed?

A. I don't think so.

Q. Did you notice that? A. No, I did not.

Q. After the collision the light on Robinson Point—that is, immediately after the collision—didn't have the same bearing from you that it did before the collision, did it?

A. Just about the same. We hadn't changed our position any.

Q. How many whistles did you hear from the "Strathalbyn"? A. To us?

Q. Yes.

A. I heard two blasts after the "Flyer" answered her.

Q. Didn't you hear three blasts to you from the—

A. —and then the danger signal.

Q. Didn't you hear three passing blasts from the "Strathalbyn" to you? A. No, no.

Q. Only heard two? A. Only heard two, yes.

Q. You heard her blow to the "Flyer" one passing blast, did you? A. Yes sir.

Q. And when you heard the next passing blast you knew that was for you, did you?

A. Well, God! I don't know. We heard it, that is all; we could not see anything; we heard a whistle; we could not see anything.

Q. You didn't know that was for you, then?

A. What would you think? We didn't know anything about it.

Q. You didn't know anything about it?

A. Certainly not.

Q. When you heard the second one, did you know anything about that one?

A. Well, it seemed to be a little nearer, to me, but we just heard that whistle and that is all.

Q. When you heard the "Flyer" make the whistle, did you have any idea what she meant by it?

A. Naturally I presumed that here—she was blowing to a vessel.

Q. Blowing to a vessel.

A. But we could not see any.

Q. The "Flyer" was on the starboard side of you?

A. Yes sir.

Q. That was a port passing whistle you heard from the "Flyer"? A. Yes sir.

Q. And the first whistle was blown from the "Strathalbyn" to the "Flyer"?

A. Well, we heard her answer the whistle.

Q. I am right, am I not—the first whistle was blown by the "Strathalbyn" to the "Flyer"?

A. Yes, I guess you are right, yes.

Q. And then you heard another passing whistle and you could not imagine what it was for?

A. Well, I presume it was for us.

Q. That is what you presumed at that time, wasn't it? A. Yes.

Q. That is why you started to look for her—is that it—if you presumed it was to you?

A. I should think so.

Q. And you could not see it?

A. We were not taking any chances.

Q. So you did not reverse immediately, though, did you? A. Oh, we stopped immediately.

Q. You did not reverse immediately? A. No.

Q. You knew exactly where the "Flyer" was?

A. Yes.

Q. You knew how far apart you were?

A. Well, guess at it.

Q. You didn't see the other fellow at all?

A. I didn't see him at all.

Q. Then you heard, about a minute afterwards, another whistle to you? A. Yes, we heard another blast.

Q. Didn't hear the "Flyer" answer either of those last two blasts, did you? A. No.

Q. Then you knew the vessel was between you and the "Flyer", didn't you?

MR. HUGHES: Not necessarily.

MR. HAYDEN: I am asking, Mr. Hughes. I don't think it is necessary for you to ship in.

A. The "Flyer"—it is not—the "Flyer" answered once. He would not answer again, no matter what posi-

tion he was in; he would answer a passing signal once, he would not have to answer again.

Q. That is what I understand, you knew the vessel was between you and the "Flyer"?

A. No, that does not follow at all.

Q. It does not follow?

A. No, it does not follow.

Q. Then you had no means of telling that that whistle was for you—is that what you understand?

A. Well, we simply heard the whistle.

Q. And you didn't think it was for you?

MR. HUGHES: He stated that he did.

MR. HAYDEN: I am asking him now.

Q. (MR. HAYDEN) Did you think it was for you?

A. I say yes, we thought probably it was for us, yes.

Q. I see.

A. Of course, as we were the only vessel in sight, we would naturally think it was for us.

Q. You did not reverse when you first heard it and could not see it? A. No.

MR. HUGHES: I object to questions being asked four or five times. It seems to me the record should not be cumbered that way.

MR. HAYDEN: I will pay the expense of an encumbrance that I make in the record.

MR. HUGHES: Well, we expect you to do that, of course.

(Last question and answer read.)

Q. (MR. HAYDEN) You did not reverse until after you heard the second whistle from the "Strathalbyn"; is that as I understand? A. Yes.

Q. Did you reverse before you heard the four whistles from the "Strathalbyn"? A. Yes sir.

Q. How long before?

A. Well, it was around a minute?

Q. Around a minute. How long after you heard the four whistles from the "Strathalbyn" before you blew your three whistles?

A. We blew right after.

Q. Well, how long? A. Oh, a few seconds.

Q. A minute? A. No, no.



Q. It was not a minute? A. No.

Q. Had you reversed before you blew? A. Yes sir.

Q. Did you do the blowing?

A. I did the blowing, yes sir.

Q. Did you do the reversing? A. Yes sir.

Q. How long after you reversed did you say it was before you struck or came together?

A. Well, it was about two minutes.

Q. Two minutes? A. Yes sir.

Q. Were you reversing full speed astern?

A. Yes sir, going astern about two minutes.

Q. Going astern about two minutes?

A. Before they struck. That is the nearest minute, might have been a little less than that.

Q. After you had given this signal to reverse, how long was it before you saw any light on the "Strathalbyn"? A. About two minutes.

Q. How long was it before you saw the loom of her hull after you gave the signal to reverse?

A. I didn't see the hull until we collided.

Q. How far had you run beyond Pully Point, in your estimation, at the time of the collision?

A. Oh, it was less than a mile.

Q. How much less?

A. Well, I should say about three quarters of a mile past Pully.

Q. You say your watch is the same as the wheel house watch? A. Yes sir, the same.

Q. Had you changed watches before you left Seattle? A. No.

Q. Were you just changing watches at the time of the collision? A. No, we hadn't changed watch at all.

Q. Had the watch been called at the time of the collision?

A. Well, we don't, no, no watch to be called. We keep watch from six to twelve, you know, we don't change watches at eight.

Q. You don't change at eight o'clock? A. No.

Q. Was there anybody on the lookout except Mr. Miguel here, that you know of?

A. No, only one lookout.

Q. Anyone forward there except Mr. Miguel that you know of? A. No.

Q. Anybody report to you a light of a steamer?

A. Nobody.

Q. Before this collision, after you had got around Pully Point? A. No sir.

Q. Did you see any steamer before you turned Pully Point, when Robinson Point came in sight did you see any steamer there?

A. Outside of the "Flyer" I didn't notice any.

Q. Didn't notice any?

A. I was looking at the "Flyer" when she was going by.

Q. You didn't notice any other steamer pass you then. Did you notice what time it was—

A. (Interrupting) I didn't.

Q. (Continuing)—immediately after the collision?

A. Yes, eight o'clock, very close to eight; it was nearer eight than it was anything else.

Q. Did you look at your watch to see?

A. Yes sir, I looked at my watch and I told the quartermaster at the wheel to note the time.

Q. You didn't blow any danger signals to this vessel that you say you could not see, at any time, did you, until after she had blown danger signals to you?

A. No sir.

Q. Did you order the course of your vessel changed at all?

A. The courses are not changed under my direction at all. The pilot has charge of the bridge.

#### RE-DIRECT EXAMINATION.

Q. (MR. HUGHES) At about the time of this collision and shortly before and after, what kind of a night was it? A. It was very dark, overcast.

Q. Did it begin to rain shortly after that?

A. Yes sir, it rained shortly afterwards.

MR. HAYDEN: I object to that question as immaterial and move to strike the answer.

#### RE-CROSS EXAMINATION.

Q. (MR. HAYDEN) Did you notice the loom of the lights of Tacoma over Robinson Point?

A. No, I didn't.

MR. HUGHES: You refer to the time of the collision, do you?

MR. HAYDEN: I refer to the time of the collision, yes.

(Witness excused.)

JOHN SHURI, produced as a witness on behalf of respondent and cross-libelant, having been first duly sworn by the notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

Q. (MR. HUGHES) Give your full name?

A. John Shuri.

Q. What was your position on the "Virginian" on the night of January 12? A. Quartermaster, sir.

Q. At the wheel? A. Yes sir.

Q. How long have you been in the employ of the "Virginian" in that position?

A. Oh, about seven months.

Q. How long have you been a seafaring man.

A. About seven years.

Q. As your ship that night approached Pully Point did you swing out any to give further clearance?

A. Yes, we swung out about a quarter of a point.

Q. When you got abreast of Pully Point did you change your course again?

A. Yes sir, we hauled back again three quarters of a point.

Q. What course did you then take when you hauled back.

A. Made the course southeast by south, by the compass I was wheeling by in the wheel house.

Q. Is that the course that you would steer for to pass Robinson Point? A. Yes sir.

Q. Did you see the red light at Robinson Point at that time?

A. No, I didn't see it. I didn't see any.

Q. You didn't. Is your wheel house closed, covered—a closed wheel house?

A. Yes sir, the front windows was closed.

Q. The front windows were closed? A. Yes sir.

Q. And the side windows were open, were they?

A. Yes, the side windows was open.

Q. Had you noticed the "Flyer" pass you about the time you passed Pully Point?

A. Yes, I happened to see some lights; then I looked out there, I saw some steamer pass us, but I didn't know—

Q. (Interrupting) On the starboard side?

A. Yes, on the starboard side.

Q. You didn't know what steamer it was?

A. No, I didn't know that.

Q. About how long after you noticed the "Flyer" or the lights of a vessel pass you on the starboard going the same way was it that you received an order to stop—oh, you didn't get that order, of course. Well, did you hear the order to stop?

A. Yes, I heard an order to stop the engines.

Q. You heard the signal given? A. Yes.

Q. The telegraph? A. I heard the telegraph.

Q. About how long was that after you had observed this vessel pass—noticed this vessel out of your starboard window, pass by?

A. Well, I can't say. About two or three minutes—about three minutes.

Q. Did you pay any attention to any whistles ahead of you?

A. I heard a couple of short blasts—whistles.

Q. Looking through the window, you were looking ahead through the windows, were you?

A. Well, I could not, I had to pay attention to my steering and look in the compass.

Q. Did you change your course any? A. No.

Q. How long after that telegraph signal to stop was it that you heard, if you heard it, a signal to reverse "Full speed astern"?

A. It must have been near a minute or so.

Q. All you would know was that the telegraph rang?

A. That is all I know, I heard the telegraph ring. I didn't know what was the matter.

Q. Did you at any time before the collision occurred change your wheel at all? A. No.

Q. When the ship backs how does she act, does she

swing her stern either to port or starboard in backing under such conditions?

A. No, she generally goes right straight astern, we get the wheel amidships.

Q. Did you hear a danger signal?

A. Yes, I heard it.

Q. Did you hear your ship answer it? A. Yes sir.

Q. Did your ship give any other signals or whistles I mean. A. No, I didn't hear any.

Q. How long had the telegraph been given to go full speed astern before you heard the danger signal, in your best judgment?

A. It must have been something over a minute, I don't know how much exactly.

Q. How long after the danger signal did you observe the impact of the two ships together?

A. Well, I would say about two minutes or so, I guess. That is a guess. I didn't look at the time. I didn't have time to see the clock.

Q. Did the third officer order you to note the time of that collision? A. Yes he told me—

Q. (Interrupting) What time was it?

A. (Continuing)—when the collision was, to see the clock.

Q. What time was it?

A. It was 7:59 exactly, by the clock in the wheel house.

Q. Had you seen any light ahead of you—

A. (Interrupting) No, I didn't

Q. (Continuing)—up to the time of the collision?

A. No.

Q. Of course from your position you could not make out—

A. (Interrupting) I didn't see any at all.

Q. (Continuing)—the position of ships, could you?

A. The front window was closed on the light—the binnacle—I can't see outside anything.

#### CROSS EXAMINATION.

Q. (MR. HAYDEN) Did you know there was anything the matter, that the officers on the bridge were having trouble at all discovering something ahead of them before this accident?



A. No, I could not tell anything, only I know they stopped the engine. I didn't know why.

Q. You didn't know why? A. No.

Q. You heard these whistles ahead of you?

A. I heard the whistles, yes.

Q. You heard somebody report some lights ahead three or four times, didn't you?

A. No, I can't hear inside of the wheel house, because the windows is closed.

Q. You didn't hear at all any report of lights ahead? A. No, I didn't hear that.

Q. Didn't you testify before the inspectors, in answer to this question, asked by the inspectors—the question was this: “Did you hear any report from forward just before this collision took place, as to any lights?” And was not your answer at that time, “I heard a report. I don't know which light. He reported some light, I don't know which light it was, the light on the port or the other ship, I don't know that.” Did you make that answer before the inspectors? A. Yes, I did.

Q. And you did hear some lights reported ahead?

A. I heard once, once I heard, yes.

Q. Is that all you heard? A. That is all.

Q. I will ask you if this was not asked you: “Did you hear any reports from forward as to”—and your answer was, interrupting the question, “I heard it three or four times reporting the lights.” Did you make that answer before the inspectors?

A. I don't remember that.

Q. You don't remember that?

A. I don't remember that I did.

Q. I am referring now—you understand the inspectors I am referring to—you were one of the witnesses who testified before the United States Inspectors of Hulls and Boilers on the 17th day of January, 1912, are you not? A. Yes.

Q. You don't remember making any statement of that kind at that time and place before Mr. Hughes and before the inspectors and before Mr. Richards, the same stenographer that is taking your testimony at this time?

A. Maybe I did, but I don't recall it.

Q. You don't recall it?

A. I don't remember it.

Q. Do you recall having heard the report of lights three or four times before the collision?

A. I heard something—somebody say something before, but I didn't hear exactly what they say. Heard some—

Q. (Interrupting) You heard some voice?

A. Heard some voice.

Q. You heard some voice about reporting lights, did you? A. Yes sir.

Q. Three or four times before the collision?

A. No, I can't say three or four times.

Q. What is your recollection about that now, was it three times or two times or four times?

A. Well, might be two or three; I can't say exactly.

Q. Two or three times? A. Yes.

MR. BOGLE: Do you mean from the time he left Seattle?

MR. HAYDEN: I am just asking this gentleman the questions now.

Q. (MR. HAYDEN) Do you remember when those lights were reported, that you are talking about now?

A. No, only once I could hear clear, a little better, say light, but I didn't hear what—

Q. (Interrupting) Where was that that you heard that once clear? A. Was some time before the collision.

Q. How long before the collision?

A. Oh, I can't say, might be six or seven minutes maybe.

Q. Six or seven minutes before the collision. Now, did you take any notice of the time between these whistles particularly? A. No, I didn't.

Q. Did you take any particular notice of the time between the telegraph to stop and the telegraph to go astern?

A. I didn't take any notice, but I can—just I can say it was a short time between that.

Q. Might have been a half a minute and might have been a minute or might have been a minute and a half—is that it?

A. It might have been about a minute or so.

Q. You don't know—

A. (Interrupting) I can't say exactly how much.

Q. When you say it was two minutes, do you know whether it was actually two minutes or whether it might have been only a minute?

A. It might be nearer two minutes, but I can't say sure. I didn't look at the time.

Q. And you were not paying any particular attention to those signals, were you, you were paying attention to your steering?

A. No, I paid attention to my steering. I have got no time to look around anywhere.

Q. You didn't take any time to pay attention to those signals at all; is that right? A. Yes.

Q. You didn't see any lights at all, did you?

A. No, I didn't. I didn't see outside any at all.

Q. Didn't see the "Flyer"?

A. Oh, I noticed the "Flyer" when she was just abeam, that is all.

(Witness excused.)

(Filed Oct. 15, 1912.)

HENRY TRIPPENSE, A witness called for and on behalf of the respondents and claimants, testified as follows:

#### DIRECT EXAMINATION.

(BY MR. HUGHES.)

Q. What is your name? A. Henry Trippense.

Q. What is your occupation? A. Chief engineer.

Q. Of what ship? A. The steamer Virginian.

Q. How long have you been chief engineer of the steamer Virginian?

A. About two years and seven months.

Q. You were on the Virginian on the night of January 12, 1912? A. Yes, sir.

Q. When the collision occurred between the Strathalbyn and the Virginian? A. Yes, sir.

Q. Please state what you were doing just prior to the collision

A. I was walking up in the alley by the engine room.

Q. How is that alley set in the ship?

A. Across the ship.

Q. Running,—

A. From the starboard to the port side.

Q. Between the engine room and what?

A. And the aft boat head. The engineer's quarters are aft the engine room door.

Q. They are on the after end of the alley, and the engine room is on the front side? A. Yes, sir.

Q. And you were back and forth in that alley?

A. Yes, sir.

Q. Just strolling? A. Yes, sir.

Q. Who was on duty in the engine room?

A. It was the first assistant's watch, but the third assistant was down there to relieve them.

Q. This alley is enclosed in the ship?

A. Yes, sir, there are doors on both sides.

Q. Were those doors open?

A. One was open and one shut.

Q. Which was open?

A. The starboard side was open.

Q. What was the first thing that attracted your attention prior to this collision?

A. There was nothing particular; there was one bell beating.

Q. The bell jangled in the engine room?

Q. Yes, I heard the bell from the engine room; I didn't pay any attention to that, because that is usual; I was thinking we were close to Tacoma. So the next bell I heard I opened the door and stepped into the engine room from the alley, and when I looked down I saw the engine going astern.

Q. From hearing the jangle, you could not tell could you whether the order was to stop or to reverse?

MR. HAYDEN: That is objected to as leading.

Q. How could you tell which the last order was?

A. By looking down; the valve motion was inboard. If my engines are going ahead, the valve motion is outboard.

Q. The bell registered?

A. No, I could not see the register.

Q. When you are in the hall you cannot tell from hearing what the signal was? A. No sir.

Q. You say that you opened the door and saw that the engine was in fact reversing?

A. The engines were reversed.

Q. It was going astern? A. Yes, sir.

Q. Did you stand there for the time?

A. I was standing there looking down, and the first thing I heard was four whistles, and I wanted for, I could not say for what time, and then I heard three whistles, then I knew that there must be something wrong, because I knew that four signals blast is danger, so I just came back out of the engine room.

Q. Did you give any signal to your engineer?

A. When I heard the danger signal I came this way to open them out full. (Indicating.)

Q. Did the engineer open it out?

A. Yes, as far as I could, and then I stepped back, and went through the alley, and stepped on the deck, and had a walk of about 15 or 20 feet aft, and when I was aft,—(interrupted)

Q. What did you go back for?

A. To look out; so I felt a crash and did not look out, but came right back and then ordered my second assistant to go down and wait for orders, and then I went forward and saw what happened, and came up and told the captain what I saw, that was all.

Q. Now they have asked that you produce the log book. I will ask you if this is your engineer's log?

A. Yes, sir.

Q. Is this the regular log that is kept by you?

A. Yes, the regular log that is kept by me.

Q. Did you make these entries yourself?

A. Yes, sir, I did.

Q. When and how do you make them?

A. I make them from the reference book, out of the engine room.

Q. You make this up in the engineer's room?

A. In my room.

Q. What do you require of your men in the engine room for a basis for your making up the log?

A. I require that they take the time from the bells, and that they work the engine according to the bells.

Q. And keep it in a memorandum?

A. Keep it in a memorandum book, and when the



ship is clear they bring it up to me, and I take it down in the log book.

Q. From your experience in operating that engine and handling that ship, what would you say as to what speed if any she had at the time you felt the collision between the two vessels?

MR. HAYDEN: That is objected to as calling for a conclusion and on the ground that the witness is not qualified.

Q. How long have you been a ship engineer?

A. 23 years.

Q. How long have you operated this ship?

A. Two years and seven months.

Q. Now you may answer the question.

MR. HAYDEN: Same objection, please.

A. On this ship we were not going full speed; we were making about 53 turns average.

Q. Fifty-three revolutions?

A. Yes, sir, turns or revolutions, and I can stop the ship in a little over a minute, no more.

Q. According to your best judgment, about what time had elapsed from the time the engine was reversed until this collision occurred?

A. Well, that is pretty hard to say, I think it must have been,—well, I could not make any estimation, because you know a minute is short when you are not looking, and it is long when you are looking for it, and I could not make any estimate except I go by the record of the book.

Q. Could you tell from the feel of the ship about what speed you had when the collision occurred?

MR. HAYDEN: We object to that on the ground that the witness is not qualified, not being where he could see, and also on the ground that it is cross examination of his own witness.

A. Well I think that the ship was stopped when the collision occurred.

#### CROSS EXAMINATION.

(BY MR. HAYDEN.)

Q. Where do you get the revolutions?

A. From the revolution counter.

Q. Did you make a note of that in your engine room log, the small log?

A. Yes, sir, right there (indicating).

Q. Show me where you keep these revolutions?

A. There is the revolution on the starboard, and here is the revolution on the port, and here is the middle, and here are the others.

Q. How do you calculate the revolutions from these?

A. I subtract one from the other, and the remainder is the revolution, and then I divide by the minutes we are running and that gives the revolutions per minute.

Q. That gives you the average revolutions per minute?

A. Yes, sir, that is what I say, average revolutions.

Q. You do not know how many revolutions you were making at the time of the collision?

A. No, sir, I do not know.

Q. She might have been going more than 53 at that time?

A. She might or might not; she might not as much.

Q. How does it happen that you were making less than the usual revolutions?

A. At that time we were making about that; that is what I figure.

Q. How does it happen you were making less than usual?

A. Sometimes we have to slow down leaving docks or anything of that kind.

Q. What dock did you leave from Seattle?

A. Pier 14 I think. I don't know exactly where. I cannot recollect whether we came from the mill or pier 14; hold on, we left the dock, Arlington dock, where we took the horses on board.

Q. The engineer in charge is the one who makes the entries, is he, of the time of receiving bells to go forward and back?

A. No, that is the oiler who is on watch.

Q. And his instructions are to put down the time when he receives the bells? A. Yes, sir.

Q. And that is what you go by in your engine room. A. Yes, sir.

Q. You think that time is about right?

A. About, yes, sir.

Q. Who was this oiler? A. Schrag here.

Q. How long has he been with you?

A. On this trip about nine months.

Q. He is a pretty good man, is he?—a careful man?

A. Yes, sir.

Q. And makes his entries accurately?

A. Well, I guess so.

Q. So far as you know he does?

A. As far as I know.

Q. And he has been under your observation and supervision during all this time? A. Yes, sir.

Q. In this small engine room book, and off at the left side of it, there is a circle or letter O?

A. That is the stop bell.

Q. And what is this next mark, like a check?

A. That is the going ahead slow.

Q. And the "W" means what?

A. Half speed, half ahead.

Q. And the QNQ means what? A. Slow stop.

Q. And the "M" means what?

A. Full speed stop; it is not an M but a character like that, pointing down, and when it points up it means going ahead.

Q. Now you left the dock at 6:29?

A. That is in the book there isn't it?

Q. Yes? A. Then that is what it means.

Q. At 6:31 that was stop? A. Yes.

Q. And at 6:31? A. It was going ahead slow.

Q. And 6:32? A. Half speed ahead.

Q. And 6:38 stop again? A. Yes, sir.

Q. And 6:39 what? A. Astern slow.

Q. And 6:39 what?

A. Full speed astern, and the double is full speed.

Q. And 6:41 stop? A. Yes, sir.

Q. And 6:43 astern? A. Yes.

Q. Full speed astern? A. Yes.

Q. And 6:41 is stop? A. Yes, sir.

Q. And 6.43 is like an N? A. That is astern.

And 6:44? A. That is going ahead.

Q. Do you know when this entry was made here, "Arrived at Tacoma January 6-7, that is crossed out?"

A. Yes, sir.

Q. When was that made?

A. Just after we were through; when the engines were going full speed ahead, and the oiler, the man who looks after it, put down the landing, and when we came there he made the other entries, and then we got in collision, and the first assistant scratched that out and put that on top of it.

Q. So from 6:29 to 6:44 your engines were working alternately back and forth?

A. Yes, sir, leaving the dock.

Q. And all these revolutions going to make up the average are included?

A. No, sir, as soon as we get full speed going ahead on both engines and we are clear,—after I have been up the cock and see that we are clear, then I sing out to the engineer to take the revolutions.

Q. Now on the top part of this page you have registered in the small book 346490?

A. The oil motor has nothing to do with it.

Q. And the register, 261340. A. Yes, sir.

Q. These are the registers on the starboard and port engines? A. Yes, sir.

Q. When was that put down?

A. That was put down on the full speed bell.

Q. You don't show in here what it was registering at the time of the collision?

A. Isn't the counter there?

Q. Yes, sir, it is here; is that what it is intended to be? A. Yes, sir.

Q. So then the register on the starboard engine would be 351230? A. Yes, sir.

Q. And on the port engine 266060? A. Yes, sir.

Q. Now you did not keep any record of the registration beyond the time of the collision did you?

A. How do you mean?

Q. Registration of the revolutions after the collision?

A. Well we were going full speed astern and full